

**Before The  
Federal Communications Commission  
Washington, DC 20554**

IN THE MATTER OF §  
APPLICATION OF SBC §  
COMMUNICATIONS INC., AND §  
SOUTHWESTERN BELL TELEPHONE §  
COMPANY, AND SOUTHWESTERN §  
BELL COMMUNICATIONS SERVICES, §  
INC. D/B/A SOUTHWESTERN BELL §  
LONG DISTANCE FOR PROVISION OF §  
IN-REGION, INTERLATA SERVICES §  
IN TEXAS §

CC DOCKET NO. 00-4

**REPLY COMMENTS OF THE  
TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION**

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February 22, 2000

Counsel for TISPA

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### Executive Summary

The Texas Internet Providers Association (“TISPA”) is a state wide association of Internet Service Providers (“ISPs”); any entity that provides Internet access or is involved in the business side of the Internet in some fashion may join as a full or associate member. Traditional ISPs, Applications Service Providers (“ASPs”), equipment vendors and carriers, whether incumbents or competitive carriers, all may join. More information about TISPA may be found at the association web site, [www.tispa.org](http://www.tispa.org).

ISPs are not carriers; they are customers of carriers. As a general rule, ISPs *per se* do not provide telecommunications service, they buy them as do their users. Both ISPs and their customers are therefore wholly dependent on carriers, and especially local exchange carriers, to connect to the Internet. This is the case with basic analog POTS lines, and the higher speed digital network access services such as ISDN and DSL.

For the most part, even when the ISP or end user subscribes to service from a CLEC, an ILEC, such as SWBT is involved. ISPs simply cannot avoid, at least for the foreseeable future, being totally dependent on SWBT<sup>1</sup>; the Company can quite literally bankrupt an ISP in a matter of days in any number of ways.

SWBT can also slowly strangle an ISP by refusing to provide additional lines to support growth, by providing low quality service, by imposing inefficient costs through interesting and novel tariff limitations or interpretations that artificially increase costs. SWBT can blame the ISP for the perceived low quality service and attempt to sell the end

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<sup>1</sup> CLECs provide service in large part by obtaining unbundled loops from the ILEC. Wireless service may provide an option in the future, but it is not yet feasible on a broad scale for the mass market. Most cable companies do not provide open access to ISPs. There is no practical alternative.

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user the service of SWBT's own Internet affiliate, which seems to rarely face the same sort of problems that ISPs encounter every day.

Texas ISPs are more than ready to meet SBC in the marketplace when the rules are obeyed and the holding company's actions are fair to all concerned. SWBT appears, however, to have embarked on a strategic mission to exterminate competitive ISPs through its continued control of the local loop and continued market power. SBC, SWBT's parent, has clearly demonstrated its willingness, ability and desire to manipulate technology, tariffs and regulatory rules to favor its own competitive enterprises to the detriment of independent ISPs. This is the case regardless of whether the ISP is SWBT's customer or is served by a CLEC. It is true for POTS, ISDN and DSL.

There is overwhelming evidence – based on both a “top-down” view of SBC's regulatory gamesmanship in relation to DSL, ISDN and reciprocal compensation and a “bottoms-up” review of the documented daily assaults in the trenches - that SBC and its affiliates in Texas are strategically acting in concert in an anticompetitive fashion to maintain dominance in local service and to obtain dominance in enhanced services.

The stories are many; yet documentation is, not surprisingly, difficult. SWBT has instructed its employees well that they cannot commit anything to writing. As a result, ISPs can offer only their own recollection of the events. Attached to these comments are recitations by some Texas ISPs of the many problems they have faced. SBC may be able to explain away some of them, or rationalize others. TISPA requests, however, that the FCC consider these common themes to see if there is more than simple incompetence at work:

- Φ Low quality service to ISPs;
- Φ Denial of service to ISPs or their customers;
- Φ Tariff gamesmanship to limit speed or geographic scope of network access;
- Φ Discriminatory treatment that favors the Internet affiliate in terms of network access.
- Φ Use of SWBT employees to steer end users away from competitive ISPs and toward SBC's Internet affiliate by blaming the ISP and promising (and delivering) higher quality network access services if the customer switches to the Internet affiliate; marketing to ISP customers

SWBT has never been and never will be an angel, but it seems to have unleashed an unprecedented assault in the last eighteen months. TISPA believes that SBC will continue until some entity with the resources and power to truly confront it is able to bring these depredations to a halt.<sup>2</sup> While the FCC cannot change the holding company's mindset overnight, it can at least not reward unlawful and discriminatory behavior by granting approval for SBC to provide in-region interLATA service.

Other commentors will present their own evidence and argument on most of the checklist items. While the points made herein can apply to many of the items, TISPA will expressly address only item 4 and the public interest analysis. But it is clear that SWBT cannot possibly carry its heavy burden of proof under § 271 of the Act. The application must be denied.

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<sup>2</sup> TISPA does not believe that even the FCC can accomplish that needed result. Sadly, it appears only Congressional action or a massive anti-trust decision requiring another divestiture or some other remedy could possibly ameliorate or deter SBC's anticompetitive zeal.

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If, however, the Commission decides to grant the application, then some measures must be taken to protect independent ISPs and the future of a competitive Internet industry.<sup>3</sup>

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<sup>3</sup> One possible solution is to grant rights to ISPs that are similar to those given to carriers as was contemplated in the *Computer Inquiry* proceedings. As a condition of interLATA approval, the Commission could require SWBT to allow ISPs to collocate in a meaningful way, to have direct access to real unbundled elements, and to directly interconnect their facilities with SBC's network on a quasi-carrier to carrier basis.

### INTRODUCTION

The main body of these Reply Comments will be relatively short. Evidence in the form of statements by Texas ISPs, instead of legal argument, is the most persuasive and compelling manner in which TISPA can communicate the significant problems faced by its members. The Reply Comments will merely summarize the general points in relation to the checklist items and suggest the conclusion that should be reached from the information that is provided. The Commission's main attention should be paid to the statements themselves.

### CHECKLIST ITEM 4 – UNBUNDLED LOOPS

Pursuant to § 251 (c)(3) of the FTA, the local loop must be provided on a nondiscriminatory basis as an unbundled network element. The nondiscriminatory access standard requires SWBT to deliver unbundled loops to CLECs, of the same quality as the loops that the SWBT uses to provide service to its own customers, within a reasonable timeframe and with a minimum of service disruption.<sup>4</sup> If the Commission finds there is no retail analogue to unbundled loops, then SWBT must demonstrate that it provides unbundled loops to CLECs in a manner that offers them a meaningful opportunity to compete.<sup>5</sup>

Texas ISPs have flocked to CLECs for PRI-based service in large part because they have received such terrible service and treatment from SWBT. The Company is hostile to ISP needs and views each of them as a nuisance that causes network planning

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<sup>4</sup> *BellSouth Louisiana II* at 20712-13, para. 185; *Bell Atlantic New York*, CC Docket No. 99-295, ¶ 269.

<sup>5</sup> *BellSouth Louisiana II* at 20717, para. 198.

problems requiring new investment or expense. SWBT ignores the millions in revenues it recovers from second and third lines to residences and small business customers and in ISDN PRI and BRI services. SBC will not compete for ISP customers; instead it will merely force CLECs to stop marketing to ISPs<sup>6</sup> and thereby recover the market. Then, SWBT and its data affiliate will be able to finish the job of directly strangling the independent ISP at the retail level.<sup>7</sup>

There is not yet any meaningful CLEC-provided competition for DSL service in Texas. To avoid repetition, TISPA – whose members should be major participants in providing network service to DSL users<sup>8</sup> – will not restate the argument of the CLECs in this regard. Attention should be paid, however, to the attached statements of ISP representatives that relate clearly discriminatory actions relating to qualification and provisioning of DSL loop UNEs to users that have tried to secure loops from “data CLECs” to obtain higher speed Internet access. SWBT does not provide nondiscriminatory access to unbundled loops, especially DSL-capable loops.

The Declaration of Nathan Stratton submitted on behalf of several small Texas-based CLECs that are attempting to provide advanced services in novel ways in small towns and rural areas clearly demonstrates that SWBT is still blocking access to UNEs. SWBT still does not understand that it cannot require a CLEC to collocate in order to access UNEs, or that a CLEC may use the same fiber or copper cable for interconnection

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<sup>6</sup> The obvious evidence of this goal is the fight over reciprocal compensation.

<sup>7</sup> SBC and its affiliates then can use their network access monopoly to force ISPs to use SBC “wholesale” services such as V-POP and DSL so that ISPs must relinquish control over their modems and other access equipment. This is discussed below in the public interest section.

<sup>8</sup> ISPs are actually the ones that proved DSL as a method for Internet access, after the BOCs put it on the shelf. SWBT and other ILECs have done an incredible job of preventing ISPs from obtaining DSL



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under § 251(c)(2) [exchange of inter-network traffic] and (c)(3) [access to UNEs]. As noted in Mr. Stratton's declaration, this is absolutely contrary to the Commission's prior rulings.

SWBT has failed to show it comports with the requirement to provide nondiscriminatory access to UNE loops on reasonable terms.

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capable loops from intrastate data private line tariffs such as SWBT's burglar alarm tariff, and the interstate Special Access Tariff.

### PUBLIC INTEREST ANALYSIS

The FCC addressed the Public Interest test in the Bell Atlantic-New York § 271 case. Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404, ¶¶ 422-429 (Rel. Dec. 22, 1999). The test is “an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.” The Commission will “ensure that not other relevant factors exist that would frustrate the congressional intent that markets be open ... and that entry will therefore serve the public interest.” One important inquiry is whether there is “sufficient assurance that markets will remain open after grant of the application” *Id.*, ¶ 423.

SBC has been allowed to provide Internet access through a separate subsidiary for several years. The holding company’s actions through its ILEC and ISP subsidiaries can serve as a useful means to predict what may happen if and when long distance authority is allowed. TISPA submits that SBC has engaged in serious anticompetitive activity in this regard, and there is wholly insufficient evidence that it’s attitude and actions will be any different in the long distance arena. There is no assurance of assurance of future compliance. SBC fails the public interest test.

TISPA will show below, and in the statements of individual members, that SWBT has engaged in a purposeful and wide-ranging effort to deny adequate service to independent ISPs and favor its data and Internet affiliates. This is not an exhaustive list,

merely representative. The most egregious harms relate to provision of network access through:

- Φ Low quality service to ISPs;
- Φ Denial of service to ISPs or their customers;
- Φ Tariff gamesmanship to limit speed or geographic scope of network access;
- Φ Discriminatory treatment that favors the Internet affiliate in terms of network access
- Φ Use of SWBT employees to steer end users away from competitive ISPs and toward SBC's Internet affiliate by blaming the ISP and promising (and delivering) higher quality network access services if the customer switches to the Internet affiliate; marketing to ISP customers

The evidence is overwhelming.

#### **Low quality service to ISPs.**

The attached statements of individual ISPs show a clear pattern of low quality service. SWBT cannot attribute this to mere bungling, as the ILEC has an admirable service quality and delivery record as a general matter. These problems appear to uniquely occur with ISPs and their customers, and disappear (as promised by SWBT marketing and repair representatives) when the customers secure Internet access from the SBC Internet subsidiary.

#### **Denial of service to ISPs or their customers.**

SWBT also has a practice of denying or disconnecting service to ISPs or their customers. One recent trend in this area relates to ISPs with term contracts with SWBT that have decided to obtain service from a CLEC for PRI dial-up, but attempt to retain analog service from SWBT. If the ISP is merely rearranging or changing from one

SWBT service to another, then rarely is there a problem. But SWBT is now disconnecting analog service based on claimed amounts owed for PRI service termination liability charges, even though PRI is generally billed separately from analog service and the ISP has challenged the charge. *But see*, Texas PUC Substantive Rule 26.28(d)(2) and (4).<sup>9</sup> On Presidents' Day SWBT disconnected analog service to Information Broker Systems, a Houston ISP, based at least in part on disputed termination liability assessments, even though the Company had not served the customer with the mandatory 10 days' notice and it was a holiday. *C.f.*, Subst. Rule 26.28(e), (h).

SWBT has also not allowed its retail customers to obtain DSL service and connect to an ISP if it claims the customer owes SWBT for another class of service. There are reports, however, that these customers are allowed to get Internet access from the SBC Internet affiliate if they enter a payment program. This option is not available to non SBC ISPs.

#### **Tariff gamesmanship to limit speed or geographic scope of network access**

A more significant issue is SWBT's refusal to provide ISDN PRI service to ISPs in exchanges or cities with less than 50,000 citizens, or when it is provided, giving a "calling scope" associated with a distant metropolitan area. Interestingly, SWBT will provide "local calling scope" for ISDN BRI. Customers can choose the "local calling scope" or that of the major metropolitan area. If they choose the latter, then the end user must then also purchase analog service for local calling. ISPs cannot provide higher speed access using ISDN if users in smaller areas must incur long distance charges to connect.

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<sup>9</sup> <http://www.puc.state.tx.us/rules/subrules/telecom/26.28/26.28.doc>.

To add to the problem, SWBT restricts ISPs' ability to purchase optional extended calling services so that customers in outlying areas that may be associated with major metropolitan area for optional extended area service (or metro service) can call the ISP. *See*, SWBT Texas Digital Link Service Tariff, Section 12, Sheet 8.1, ¶ 7.3.<sup>10</sup>

An independent ISP cannot obtain even a basic analog service in a smaller city and then subscribe to a combination of either SWBT's "Local Calling Plus" or "1+Direct Saver" and call forwarding to most efficiently collect calls in small exchanges and forward to a main POP that serves multiple exchanges. SWBT takes the position that its General Exchange Tariff, Call Management Service, Section 10, Sheet 2 ¶ 2.9<sup>11</sup> prohibits this approach. This is so, even though the subscriber to SWBT's Local Plus service expands the calling scope and the forwarded call is therefore within the local calling area.<sup>12</sup>

SWBT also will not allow ISPs to use call forwarding in association with its optional toll package such as 1+ Saver Direct<sup>13</sup> to effect essentially the same result. This should be allowed, because the ISP is paying the long distance charges associated with

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<sup>10</sup> Available at [http://info-search.sbc.com/data/tariff/data/pdf/texas/dlst.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fdlst%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=SelectVideo&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/texas/dlst.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fdlst%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=SelectVideo&&X1X) – page 155 of 217.

<sup>11</sup> Available at [http://info-search.sbc.com/data/tariff/data/pdf/texas/get.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fget%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=call+management&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/texas/get.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fget%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=call+management&&X1X) – page 531 of 1070. The cited text provides that "Services with call forwarding capabilities (including Call Forwarding, Selective Call Forwarding, Simultaneous Call Forwarding, Call Forwarding-Busy Line, Call Forwarding-Don't Answer) cannot be used on a continual basis to expand the local calling scope beyond that available to a customer's premise."

<sup>12</sup> At least that is what SWBT says at [http://www.swbell.com/cgi-bin/page.exe?File=ProdOverview.html&PRODUCT\\_CODE\\_EQ=LPL](http://www.swbell.com/cgi-bin/page.exe?File=ProdOverview.html&PRODUCT_CODE_EQ=LPL) .

<sup>13</sup> See [http://www.swbell.com/Products\\_Services/Business/ProdInfo\\_1/1,1198,25-0-6-1-0,00.html](http://www.swbell.com/Products_Services/Business/ProdInfo_1/1,1198,25-0-6-1-0,00.html).

calls that are forwarded to a number in a distant exchange within the LATA. General Exchange Tariff, Section 10, Sheet 3 ¶ 3.2.<sup>14</sup>

**Discriminatory treatment that favors the Internet affiliate in terms of network access**

One ISP in particular, Rural Networking Partners, LLC d/b/a Hilconet and DelRio.com (“Rural”) has suffered greatly from SWBT’s tariff games. Dan Eason of Rural provides a compelling recitation of the harms that have been visited on Rural by SWBT. Of particular note is SWBT’s offer to solve the problem by selling V-POP, a service now offered by SBC’s advanced data subsidiary. If an ISP allows SBC to manage the ISP’s modems, then it is possible to collect calls from throughout the LATA at a significantly discounted price.<sup>15</sup> It is not possible, however, for an ISP to subscribe to only the network access terms of the V-POP offering without also using SBC to run the modem banks on behalf of the ISP.

SBC asserts that Advanced Solutions, Inc. obtains tariffed services from SWBT. According to the SBC Regulatory web site, Advanced Solutions uses the very same offerings (such as ISDN-PRI [SmartTrunk], basic exchange service, extended area calling service and call management service, including call forwarding)<sup>16</sup> that Rural was attempting to utilize to effect wide-area dial up capability. Using SWBT’s control over local access to require ISPs to purchase V-POP is an obvious tying arrangement and is

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<sup>14</sup> Available at [http://info-search.sbc.com/data/tariff/data/pdf/texas/xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fget%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=call+management&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/texas/xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Fget%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=call+management&&X1X) - page 532 of 1070.

<sup>15</sup> [http://info-search.sbc.com/data/tariff/data/pdf/federal/fcc73/sect37.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ffederal%2Ffcc73%2Fsect37%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=VPOP&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/federal/fcc73/sect37.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ffederal%2Ffcc73%2Fsect37%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=VPOP&&X1X).

<sup>16</sup> [http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/swb2asbc\\_ts.html](http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/swb2asbc_ts.html).

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discriminatory, unreasonable and unlawful. If SBC is allowed to enter the long distance market, then it will be able to further harm ISPs' interests and long distance competition.

There are two other examples of discriminatory treatment. As several ISPs indicate in their statements, SBC once promised to provide referrals to ISPs that were SWBT's DSL partners on an equal basis. SWBT has reneged on this promise. SBC's Internet affiliate now receives all referrals, unless the customer first specifically rejects SBIS.

Similarly, several ISPs present very disturbing information that shows SWBT is discriminating between its affiliate and DSL partners in terms of loop qualification and provisioning. And, when an ISP partners with a CLEC, they suffer the same treatment.

**Use of SWBT employees to steer end users away from competitive ISPs and toward SBC's Internet affiliate by blaming the ISP and promising (and delivering) higher quality network access services if the customer switches to the Internet affiliate; marketing to ISP customers**

ISPs are more than happy to compete directly with SBC's Internet subsidiary. They cannot, however, compete when the entity that provides network access (or sells and maintains the unbundled loop to the CLEC providing network access) is primed to blame the independent ISP when SWBT's services fail to properly function. SWBT's employees recommend that the customer instead use SBC's Internet subsidiary. Customers cannot be expected to know that the problem is really with SWBT service. All they know is that the repairman blames the independent ISP and promises that SBC's Internet subsidiary will be better. This is unfair competition.

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Another significant problem is that SWBT appears to provide its affiliate with the names and contact information of ISPs customers so that the affiliate can market its service. SWBT will not provide this information to independent ISPs. This provides a distinct market advantage. Independent ISPs cannot survive if SBC is allowed to continue this anticompetitive activity. It **must** be stopped.

TISPA submits that SWBT cannot meet the public interest test. Allowing SBC to expand its anticompetitive activity to the in-region interLATA arena cannot be in the public interest. SBC's historical hostility to its enhanced service competitors provides more than sufficient evidence that it cannot be trusted in long distance.

**WHEREFORE, PREMISES CONSIDERED, the TEXAS INTERNET SERVICE PROVIDERS ASSOCIATION** respectfully requests that SBC's application for authority to provide in-region InterLATA service be denied.

Respectfully Submitted,

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#### **CERTIFICATE OF SERVICE**

The foregoing document was sent to all parties listed as such by the Commission in this proceeding on February 22, 2000.

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W. Scott McCollough



## **DECLARATIONS**

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**Declaration of Allen Jenkins**  
**on behalf of NetWest Online, Inc.**

Tuesday, February 22, 2000

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**Letter to Southwestern Bell protesting treatment of the ISP, and poor service**

Southwestern Bell is in the process of launching their DSL program in West Texas, specifically in the Odessa/Midland area. In doing so they have employed the normal tactics of a monolithic uncaring monopoly. They have set the scene, as they have so many times before, by denying and/or delaying other services that they have had in place so that their new DSL program can be launched with much fanfare and anticipation from the public since their current services have become unusable. Our company has gone through one embarrassment and financial loss after another due to their pre-launch tactics. Their goal is to make normal services from local ISP's so inferior that when their DSL is launched they will have people waiting in line to sign up with them. They constantly claim "out of facilities" to further their plans.

The following is a letter written to SBC outlining my experiences:

Ms. Carol Stein  
Southwestern Bell Telephone  
PO Box 60630, Room 118  
Midland, TX 79711-0630

February 16, 2000

Dear Carol:

In our previous telephone conference you have asked me to place in writing my problems with Southwestern Bell. As you are aware I am an Internet service provider. Southwestern Bell has not provided me the needed facilities to conduct my business. I have no alternative in most of my locations but to use Southwestern Bell. In the meantime Southwestern Bell has now become a competitor in the market. They advertise that there will be no busy signals with regard to their service. However, Southwestern Bell cannot provide me sufficient facilities so that I can make that promise to my customers. Further, my own competition has been able to provide better access to the net than NetWest because they are evidently able to acquire facilities from Southwestern Bell to provide this access.

As you probably are aware, the value of my business is determined by the number of subscribers that I have. Because Southwestern Bell has not provided me the necessary facilities and because of the problems described below in this letter I feel I have been damaged by Southwestern Bell, who is also a competitor, and a company which I have no choice but to use.

I apologize now for the length of this letter. However, my attorney stated that I should make a detailed and concise appeal to you in the hope that this matter can be worked out without attorneys becoming involved.

My first bad experience with Southwestern Bell started in January of 1998 when I was told there were no more facilities for PRI lines and that no one knew when they would be available. We waited until June of that year to receive additional lines. During that time Caprock Internet Service opened for business in Odessa and was told the same thing about the PRI lines. Since their equipment was not configured for PRI lines like ours they were able to bring in channelized T1 lines initially and start taking calls. Southwestern Bell went against their tariff on the sale of this T1 by not charging the company for installation. When PRI lines became available they dropped their channelized T's. The only solution NetWest could come up with was to order ISDN lines. We only had equipment to handle 8 ISDN lines and were not in the position to spend tens of thousands of dollars for a temporary fix. We ordered the eight lines and they immediately filled up. From January to June NetWest lost over 1200 customers to Caprock and Midland based Internet providers who were able to give access to our customers when we could not. No compensation or discount was given. In August of 1998 we had the same problem again. We waited two months for additional PRI lines to be installed. Customers were lost to other service providers and no compensation or discount was given by Southwestern Bell.

In January 1999 we again had the same problem and waited eight weeks this time for new lines to be installed. During this period we lost 350 subscribers to other service providers and no compensation or discount was given by Southwestern Bell.

In May of 1999 we ordered PRI lines for our Abilene POP. In July we ordered additional PRI lines and again we were told no facilities were available. We waited until October to get additional lines. When we opened the Abilene POP it was primarily to bring Internet service to the surrounding cities. Snyder was the main city we wanted to reach. We had planned to put a rollover number in Roscoe to bring Snyder traffic into Abilene. We were told that we should no longer order DRS numbers that would roll calls to other cities because the tariff was changing and we would be charged by the minute on these calls and that the ones we had now would not be "Grand fathered". So at that time we decided to put a physical POP in Snyder. We ordered an Integrated Pathway T1 for our Snyder POP. The circuit was installed improperly and was also billed at a much higher rate than it should have been. We waited until October for the line to be installed right. We went through numerous periods of downtime while Southwestern Bell tested the circuit to try and determine the problem. Another ISP in Snyder had the proper circuit installed during this entire five-month period that it took to figure out how to put this line in right for us. After the line was finally installed properly which coincidentally fell at the same time additional PRIs came available for the Abilene area we immediately ordered an additional IPA for Snyder. This time it took two months to install the line properly. In December of 1999 we ordered an additional IPA for Snyder and waited five weeks after installation before the line actually worked. To date the tariff has not been changed for the DRS numbers so we could have put this in to begin

with and saved thousands in equipment and monthly expenses. During this period that we were not able to take calls due to no facilities available and Southwestern Bell not being able to install our circuit properly NetWest lost incalculable amounts of money. We had to give two months free service to our existing customers in Abilene and the surrounding area to keep them from going elsewhere. This alone was over \$14,000.00. We ended up losing many subscribers to Southwestern Bell who sent a mailer to Abilene residents and surrounding community residents offering Internet service with “no busy signals” during this same time when Southwestern Bell couldn’t get local providers service. The only credits we have received were on the IPA lines that we were over-billed on to begin with.

During the last part of 1998, the first four months of 1999 and the last two months of 1999, we had numerous calls from customers complaining of being dropped from our service in the middle of an Internet session. We called Southwestern Bell tech support and had Charles Chitwood come by to test our PRI lines for trouble. He could never find the problem. The dropped connections kept occurring. We spent thousands of dollars with Ascend tech support and hundreds of man-hours working on this problem with our equipment manufacturer and were told over and over that it was a Southwestern Bell problem. Southwestern Bell couldn’t find it or fix it. Recently Jones Motors opened their doors at their new location on 42<sup>nd</sup> Street in Odessa and we ordered 8 ISDN lines for them. Southwestern Bell could only put seven of the ISDN lines in because you ran out of facilities. Shortly after the lines were installed the calls going into Jones Motors were dropped in the middle of a conversation. This happened repeatedly and Southwestern Bell blamed it on the phone equipment. The equipment was entirely replaced and the problem continued. Turns out this is the same problem that NetWest customers had dialing in to us and it is because Southwestern Bell did not have enough pathways to terminal to complete all the calls and the equipment that was in place wasn’t working properly. So our customers, just like Jones Motors, were being knocked off in the middle of a session. Saulsbury Telecom discovered this problem when they overheard Southwestern Bell technicians discussing what was happening.

For the past two years, on and off, Odessa NetWest customers have been experiencing the message “all circuits are busy” when they dial in during the evening. We have open PRI lines waiting to take these calls but they can’t get here. After discussing the problems that NetWest has had with Southwestern Bell employees in other parts of the state, the response has been we knew and we know that Odessa has a problem. During our conference call conversation Cindy said that she was installing 324 more trunks to alleviate this problem. After I heard that I knew we had a bigger problem than I realized and ordered an additional PRI for the Odessa location in case once all the calls were completed I didn’t have enough lines to carry them. My order was delayed a full week and sure enough now that you have added trunks to complete my customers calls we have busy signals. As you know ISP’s monitor the capacity of their last PRI installed so that they can make a decision as to when to order additional ones. Our last one never took calls because your company didn’t have facilities to get the calls to us so we assumed we didn’t need anymore. We had no idea of the extent that our customers were experiencing the “all circuits are busy” message.

In January, I ordered an additional PRI line for our Abilene location a few days after I ordered one for Snyder. This was done with Scott Moore in Abilene. A few days later, on February 1, I received an e-mail giving me the circuit numbers of the Snyder line. Later that week I called and asked about the Abilene circuit and was told he "hadn't heard anything yet". The next week I again called and asked about the PRI for Abilene. He looked up the date that I ordered it and said that he "should have heard something by now" and would find out and let me know. He called the next day and told me the order hadn't been worked because he never received my faxed contract. I re-faxed the agreement. He called me a day or so later and told me I was not going to like the news and proceeded to explain that they were out of facilities for PRIs in Abilene until mid-April.

I asked him if there was an alternative to get my customers connected and he said no. I then asked if he could waive the installation fee for a channelized T1 in Abilene. He told me that he would check with you. When we spoke last, you agreed to waive the install fee, so I ordered the circuit with the understanding that it would be replaced with a PRI line when it came available. Scott called me on the order and told me the line cost was \$1,800.00 per month. My normal line costs is around \$475.00 per month. Around this time I realized that the channelized T would not work because the majority of my customers were calling into a DRS number that rolls into our Abilene POP so one T1 would not help. I discussed this with Scott and his response was that he "would be glad to sell me more". This was a typical SBC response to a major crisis. His reply wasn't "I'm sorry, I'll see if I can get the price reduced since we can't sell you any PRIs and we're killing your business. I'll do my best to help". It was I don't care, let me sell you the expensive IPA so I can get more commission! I told him to check and see if there was another city in the local calling scope of Colorado City that I could divert customers to. He still has not called me back and I'm sure he will not.

At this time we have stopped signing up new customers in the Abilene area. We normally net 110 customers a month in this area. Southwestern Bell still advertises no busy signals in Abilene and has lines for themselves but not for other ISPs. I now have to turn away over 200 customers that equate to \$600.00 a piece.

It is impossible for me to determine completely what my damages have been as a result of the actions of Southwestern Bell. I am sure that there are a number of customers that I would have at this time if Southwestern Bell had provided me the facilities which they have provided themselves. If my customers didn't have busy signals as Southwestern Bell advertises, and the easy access to the net that you provide, then the value of my business would be considerably higher.

We are requesting a credit on our account equal to the highest monthly service paid in 1999. This is approximately \$24,000.00. My actual loss has been far in excess of that due to Southwestern Bell poor performance, negligence and mismanagement.

We also request that an account representative with our interest in mind, be assigned to NetWest and that any further problems of this type be resolved immediately and additional credit to our account be given per instance.

If you have any questions with regard to this letter, please feel free to contact me.

Allen Jenkins

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**Declaration of Bobby Adams  
on behalf of Fayette Area Internet Services**

Tuesday, February 22, 2000

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Recently, the FCC OK-ed La Grange to be included in the Extended Local Calling for Flatonia, Texas. We have spoken with the FCC and the approval date was 1/99.

We have called numerous people with SWB and cannot find anyone who can give us a date when the service will be implemented.

Does anyone have a contact with SWB that may be able to answer this question??

Thanks,  
Bobby Adams  
bobby@fais.net  
Technical Support  
Fayette Area Internet Services  
409-968-3999

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**Declaration of Dan Newman**  
**on behalf of The Optimal Link Corporation**

Tuesday, February 22, 2000

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Help!

We woke up this morning to the dismal news that SWB is marketing ADSL in Houston under the following terms:

1. \$39.00/month for the DSL line from SWB Telephone.
2. Free Internet Service from SWB Internet Services.
3. DSL modem and NIC equipment package charge normally \$198, now free.
4. Free installation.

That's right, SWB is offering in a major campaign, \$200 in free equipment and free Internet service for ADSL, if the customer signs up for a year of SWB DSL line service.

We're a partner with SWB and for the privilege of being a partner, we pay \$500.00/month for the ATM line to serve the Internet to SWB Telephone DSL customers. We are given no rebate on the equipment needed for our clients. We are given no rebate on our clients monthly DSL line charge. We do receive a paltry \$60. commission for each DSL customer we sign up, but this doesn't come close to our costs when you factor in our uplink costs from Savvis, rent, salary, etc. We've also been aggressively marketing the SWB DSL line service in radio and newspaper ads.

How can SWB do this? It seems like monopolistic policy to me. It will certainly drive us out of business. We feel like we were duped big time into signing up with them for the "partnership." There was no advance notice to partners of this new promotion.

Anyone have any ideas on what we should do? Are there other SWB ISP partners like us who may be willing to band together to confront SWB on this?



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**Declaration of David Robertson**

**on behalf of STIC.NET**

Tuesday, February 22, 2000

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We are getting these left and right! SWB should not be allowed to Predatorily price a product using the public network. PLEASE STOP THEM.

-----Original Message-----

**From:** Harland Jylha [mailto:hjylha@stic.net]

**Sent:** Friday, February 18, 2000 5:28 PM

**To:** hackett@stic.net

**Subject:** DSL from SWBell

Dear Bob - I just read in the paper that SWBell is advertising DSL for \$39.95 a month with free DSL Modem and free installation which includes Internet service.

If this is the case it would be foolish for me to pay \$200 for equipment, \$39 for DSL and \$9.95 for stic.net. Please contact me at 694-4699. I need to rethink my plan in order to save money. I think I should go with SWBell. Thanks,

Harland Jylha

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**2<sup>nd</sup> Declaration of David Robertson**

**on behalf of STIC.NET**

Tuesday, February 22, 2000

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We have joined with SWB to resell their DSL. Now that we are committed to a \$5,400 per month contract for the atm link, they have cut our legs off at the knee. Their “**LOSS LEADER**” of special DSL pricing will only last till we and most other ISPs are gone. Then they will be able to raise the price to whatever Gestapo price they choose. We do not want regulation of the Internet, but it is the government that puts the BITE IN THEIR BARK by allowing them to ignore federal regs. It should be the government that harnesses these guys to the 1996 telecom act.

If allowed to compete in a market free from undue influence from government-condoned monopolies, we will SUCCEDE IN DESTROYING THE DIGITAL DIVIDE IN THE USA. If the Bells are allowed to cross subsidize, and sell at losses till we are gone, it is the American end user that will suffer the greatest loss! Grab these dudes by their overgrown egos and put a leash on them...please.

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**Declaration of David Robertson**  
**on behalf of Multiple UNNAMED ISPS**

Tuesday, February 22, 2000

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The following testimonials do not have names on them. These ISPs may be contacted through contacting me and having me pass on requests for documentation. These statements were presented to the FCC while visiting with Chairman Kennard, last October when he held meetings with the USIPA. **These are worth reading.**

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I was refused participation in a S.W.Bell Yellow pages program because S.W.Bell telco considered us competition and did not want to promote our services through the newcomers package we had been in for the previous year. This was a package that was sent to all new hookups in our region with a new phone book and our paid advertisement was included along with it. I found it strange that S.W.Bell telco would or could dictate policy to S.W.Bell Yellow Pages and the fact was that **S.W.Bell did not offer dialup services in our area anyway.** Their salesman and his supervisor informed me of this, so this was not a mistake of information.

They also called me a few months ago to offer reinstatement into this program (after about two years). The program was very beneficial to us at that time. It had to be money was tight. S.W.Bell was just using their clout to make sure we didn't get to big before they offered their services in our region.

\*\*\*\*\*

Last summer, we wanted to add an ISDN-only dial-up PRI that would roll over into our regular pool. They did it \*wrong\*. They did it over, but have not yet removed the install charges they said we wouldn't have to pay (because the install was really a correction to the previous order). All I want is for this to be grounds for cancelling our contracts with them. I don't need this aggravation.

Also, an employee of mine moved recently. She wanted to get ISDN at her new abode as her ex-spouse had given(!) her a Pipeline75. The sales person tried to talk her into DSL and when she explained that her ISP didn't offer DSL services currently, she was told that SWBell \*did\*. Also, she carefully explained what she wanted to accomplish with the line, but somehow the ACO and CallNotes got dropped from the order. So, it took them a month to get it working right.

Had she not been an employee, I may never have known and I may have lost a customer. It's possible that I'm losing customers because of this practice, but I just don't know about it.

\*\*\*\*\*8

One complaint about Southwestern Bell DSL is that customer will express interest in getting DSL with our ISP and then the next day will get a call from Southwestern Bell ISP asking for their business because they are cheaper. Southwestern Bell's ISP obviously gets a list of new DSL customers with Southwestern Bell telephone and then cold calls them in order to try to get them to switch.

Another complaint is that customers will be denied access to DSL because their "loop is too long." We pass that information on to customer and then several days later or even the same day, customer is contacted by Bell ISP and told that if they sign up for Internet service with Bell's ISP then they can probably get them connected. Basically they tell customers that they can pull strings and get them a DSL line installed. We can't pull those strings!!!!

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1. When I first opened my doors in February of 96, I placed an order for T1 to the Uunet POP in Dallas. SWB gave me a due date of February 21st. Based upon this, I advertised and started signing up customers. On February 22nd they called and said I wouldn't get the circuit until the first week of May. After weeks of arguing about it, I got the circuit the first week of May. I didn't lose any business from it because I didn't have any business. But I certainly lost a lot of money.

2. When I tried to open a POP in Sprint territory, I ordered a T1 to the Verio POP in Waco. I was given a due date of March 11, 1998. This particular T1 was half Sprint and half SWB. On March 12, when I called the check on the circuit, I was told I couldn't have it until mid-May.

After arguing about it for a couple of days, I got a SWB engineer from San Antonio absolutely promise me I would have it by April 13th. I checked with him weekly on the progress until on April 13th he said 'Oops, you can't have it until mid-May'. Again, I don't know if I lost any customers here, but I did lose money.

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On June 24th, 1999 I had a face to face meeting at the S.W. Bell offices in Houston with my account representative. Present was her assistant, a person handling line provisioning and a technical representative. The meeting lasted two hours. At that meeting, I ordered 14 spans of Select Data spread over three POP's. All spans were to be delivered on July 12th, 1999. Two spans were to be rushed through for delivery on June 28th for testing purposes. The delivery dates kept getting moved up to later dates. Finally, on September 14th, I got the two "rushed" spans. The balance of the lines were delivered in October. During all this process, the S.W. Bell representative was trying to sell me S.W. Bell leased modems for 45.00 per month per port.

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Over the last four years, to call in a trouble ticket on a single line was nothing less than a week long process. I've even had a repairman tell me he was going to recommend that S.W. Bell not respond to a service call in one of our locations. There were too many lines for them to work on. It took too long. Finally I agreed to pay for repairs at 87.50 per hour or any part thereof. Keep in mind that I pay S.W. Bell over 40,000 per month in line charges already.

In December 1998 I opened a new POP in Columbus, TX. I ordered a point to point T-1 from Columbus to El Campo, invested 36,000 in new equipment and ordered 4 spans of analog T-1 (since at that time, digital was "unavailable." A delivery date of February was given on the entire setup. Finally, in April, the lines were turned up, but they never worked. I had received a written quote on the analog T-1 spans of 1,448 per span. When the bills came in, I was being charged 2,800 (and some change) for each span. I notified my rep. and she said she would take care of the problem. Still, after many service calls, we found out they were providing "ground start" provisioning, which is all that location could provide when I had specifically ordered either wink or FX. The bills kept coming at the higher rate, until I just finally cancelled all the lines in July, including the

point to point T-1. At the face to face meeting mentioned above, I took a folder with all the bills I had received since April on that location, which amounted to something over 40,000 along with a copy of the written quote I had received. I had paid most of the bills, and my rep. said I would be credited on all the charges. Last week, I received a certified letter from S.W. Bell threatening to shut down service on those lines (even though they have been disconnected since July). I contacted my rep. again and she said the bill would be corrected that day and she would get back to me. I still haven't heard from her, but I've called twice and left voice mail, and I've sent two emails.

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We ordered a PRI line from SW Bell. This line produced nothing but problems since day one. Customer support calls were unbelievable. SW Bell almost lived with us trying to fix the problems. We heard every excuse in the book. Problems would mysteriously fix themselves after SW Bell would report they could find no problems. We constantly heard the CPE mantra, so like fools we bought all new equipment and still had problems.

We finally gave SW Bell an ultimatum to fix their service within 60 days (I was generous) or we would terminate it. After 60 days, we still had problems so we terminated their service. We then switched to a CLEC and using the same equipment had no problems.

SW Bell subsequently demanded \$10,000 from us for termination fees, which we refused to pay because they could not make their service work. They then threatened to terminate all of our phone services in an attempt to coerce us into paying there termination charges. SW Bell eventually cut off our primary phone service which caused us to be out of business for a week (voice services). We managed to get new voice phone services operational with a CLEC, but SW Bell refused to release our phone numbers. People trying to contact us thought we were out of business.

The problems that mushroomed from this nightmare are unbelievable. SW Bell is still trying to collect there \$10,000.00 from us. They have filed adverse credit reports with all of the reporting agencies and turned us over to collection agencies. This matter will probably wind up in court.

On a side note, when our customers started calling SW Bell to complain,

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they were told to switch to SW Bell Internet services.

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During a 100% outage of PRI ISDN , our clients were informed that the client should consider SBIS because the problem was with the our ISP services.

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**Declaration of Dennis W. Simpson**

**on behalf of August.Net, LLC**

Tuesday, February 22, 2000

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Dear Sir:

It is well proven by the Justice Department that Microsoft bundled products illegally. Netscape could not sell against Microsoft who gave their browser for free. Microsoft put droves of other companies out of business because no one can compete against a company that bundles products or services for free.

So why will you consider allowing Southwestern Bell to bundle their ISP service for free? It is already starting to put us out of business. No ISP can compete against a company that bundles ISP access for free. Make them charge what it fully costs them, and we can compete just fine. Otherwise, you will just destroy the entire ISP industry just like Microsoft did in their area.

Sincerely,

Dennis W. Simpson  
972-416-0683  
2219 Cedar Circle  
Carrollton, TX 75006



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**Declaration of Evan Miller**

**on behalf of The Information Utility, Inc.**

Tuesday, February 22, 2000

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I want to communicate complaints from The Information Utility, Inc., against Southwestern Bell.

The Information Utility, Inc., (TIU), a Texas "S" corporation, was a small ISP operating in Allen, Texas, near Dallas. It operated for over 3 years in good standing with all agencies, creditors, and suppliers. It ceased operations December 31, 1999, after being driven out of business by Southwestern Bell. TIU sold all its assets to Waymark in December 1999.

TIU has two complaints to register with the FCC and PUC against Southwestern Bell (SWB). The first complain is from their practice of "cramming" - adding charges to the bill without full prior disclosure and agreement. The second complaint is based on anti-competitive policy of Southwestern Bell and/or Southwestern Bell Internet Services (SBIS). I mention both companies because the distinction between them is hard to find due to bundled services.

**Cramming**

On July 26, 1999, TIU signed a contract with SWB for their SelectData PRI service at a monthly rate of \$513.91 before taxes. I can provide a copy of the contract and their proposal of \$513.91 per month.

After signing the contract, we discovered when the first bill arrived that the actual monthly bill was \$1286.13 before taxes, or 2.5 times the amount that TIU agreed to pay. The cause of the increase was a \$662.40 "Extended Area Service Charge" that was not disclosed before TIU signed the contract. This increase in fixed cost did not allow TIU to stay in business and make a profit. I doubt that any ISP can afford to pay \$1300/mo per PRI.

SWB was aware of their mistake because they waived the SelectData installation fee in an attempt to compensate for the error after I pointed it out to them.

We tried to negotiate a settlement to end the contract from September through November. I faxed letters to them on 12/3/99 and 12/24/99. They did not respond. I confirmed that they received those letters. I have copies of those letters available.

After selling customers and assets to Waymark, TIU cancelled the PRI service with SWB effective 12/31/99. The account was paid in

full when it was cancelled. I have a copy of the cancellation request.

I have a letter from the Collection Division of SWB, dated 2/17/2000, demanding payment of \$27,810.56. TIU cannot pay it, of course, because it is out of business and has insufficient assets. TIU sent them a letter today informing them of the history of the situation concluding with TIU's inability to pay based on their actions.

### **Anti-Competitive Policy**

TIU ordered ADSL service from SWB in July 1999, for the purpose of connecting customers to the Internet. The total cost of the ADSL service plus internet connection service from SBIS was quoted to be under \$400 monthly. The low pricing was the reason that TIU was seeking the service.

After SWB installed the telephone line to carry the ADSL service, TIU learned that SBIS and/or SWB would not allow ISPs to resell the Internet connectivity bandwidth of the ADSL internet connection to customers. This appears to be a policy designed to discourage competition with SWB and/or SBIS, since only ISPs are affected by the policy. Any other business may resell that bandwidth or make it available to others via dial-up access equipment. The ADSL line was on SWB account 972-359-9929-528-9. It was cancelled.

As a result of this anti-competitive policy, TIU was forced to accept a higher cost but lower performance solution, 256k Frame Relay. The cost of the Frame Relay service plus Internet Connectivity was over \$800 monthly, or twice the cost of the ADSL solution. Only ISPs are forced to pay for Frame Relay instead of ADSL.

TIU cancelled the Frame Relay service on 12/31/99 with fully paid account status. SWB is now demanding payment of \$15,762.19 even though it is they who put us out of business by forcing so much cost upon us by cramming and anti-competitive pricing.

In conclusion, these facts show unfair, unethical, negligent, predatory, and anti-competitive behavior by SWB and perhaps SBIS.

TIU seeks the influence of the FCC and the Texas PUC to persuade SWB to cease these practices and to cease damaging ISPs in general, and TIU in particular.

Thank you for your attention.

Regards,

Evan Miller  
President,  
The Information Utility, Inc.

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**Declaration of Gary Bowling**

on behalf of New Frontier Consulting

Tuesday, February 22, 2000

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We at New Frontier Consulting are a very small, but very high tech consulting company. We resisted the temptation to offer such services as DSL because we are mostly a high end consulting shop (ATM, Fore, Cisco, Large corporate design, etc.) and feared we could not compete with larger vendors in a commodity market.

Then SWB approached us because we do some consulting for them and they thought our expertise would help in ADSL.

Just after we signed our agreement, we got undercut. Consequently we haven't sold any ADSL (other than to ourselves and existing customers) and the future doesn't look bright for that piece of business.

We don't have very much in the way of resources, either money or manpower. Someone needs to fight back!

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**Declaration of Graham Toal**  
**on behalf of Valley Tech**

Tuesday, February 22, 2000

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Before I get into specifics, let me give my general opinion of our relationship with SWB:

1) It is \*impossible\* to get anything out of them in writing to do with problems. The only things I have ever had from them in writing are quotes for service, contracts, and invoices. In the FIVE years I've been dealing with them, any time they have verbally promised to put in writing or fax what was said by phone, it has never turned up. They have even said on occasions that they are not authorized to put in writing what they have just that second said to me and that it would take a company lawyer to put it in writing. (You can tell them to go get the lawyer in that case, but it still won't turn up)

2) Almost all the major outages that our customers have suffered have been because of unsolicited action by Bell affecting their lines. Invariably the problem clears up, SWB denies all knowledge of anything wrong with their systems, and \*we\* get stuck with a bill from Bell for sending out an engineer to test the lines. We also incur heavy expenses because we have to drive all over the valley (100 miles +) to check customers out for ourselves to confirm it is indeed a Bell problem when they deny it.

3) Because of Bell's blame game whenever there is a problem, we haven't even dared to order any services through competing CLECs, because we're sure that at the first sign of trouble we'll get even worse repair service than we do from Bell directly. This is a common fear based on their past behavior.

OK, to specifics: It's hard to know where to start, but I'll concentrate on ISDN because that's the business that SWB is set to take away from us by charging less for a 24hr DSL line with Internet than they charge our customers for the ISDN line alone. (A BRI costs \$57/mo but with the extra charges that appear on the bill they end up paying \$80/mo for the raw line.) Most customers in the Valley also require Local Plus (extended area calling plan) at another \$50/channel, especially after a recent change to the Bell switch which allowed them to issue every town with a local number as opposed to the previous scheme where all numbers were issued from either McAllen or Brownsville, though I believe the switch

was in Brownsville for all of the lines regardless of where the number was). This brings the customer charges for an ISDN line that has less capacity than a \$39/mo DSL line to \$180/mo - with our internet access charges on top of that.

Note when we set up ISDN service, we wanted to have a dialup number out of Brownsville which would be delivered to our McAllen premises. Bell told us this was impossible. We later found out it was possible at the time that we asked, using a Select Video circuit, but by the time we found this out, that service had been removed from the tariff. Again, it was impossible to get \*any\* of this in writing, so I am working from memory here.

We now have 3 PRI's out of McAllen. We got them one at a time. Every single one was extremely late or had problems. With the first one, Bell was clueless about how to set them up, and we had to pay a lot of money to a consultant in San Antonio who know Bell's capabilities better than Bell, who took them through the process by phone. They had a lot of difficulty getting the signaling right. We did get it up eventually but we had a lot of customers sitting around waiting for us.

Later we added another PRI to the same phone number. Not only did Bell never manage to set it up right (we eventually kludged it by having two 23B+D's instead of 47B+D that we'd wanted - paying for a line we couldn't use), they actually brought down our current customers for several days. After it all worked, we complained bitterly; they offered us compensation; no paperwork ever appeared nor any compensation. I eventually told them to forget it, but to remember they owed us one and cut us some slack next time we were adding a PRI. By the way, we lost several customers to other ISPs because of that outage. Needless to say, the next time was worse (and believe me, no slack was cut):

PRI #3: By this time, we were wise to them, and rather than add the third PRI to the existing two, we asked for it to be installed completely independently - a brand new circuit on a new number. (This is less than optimal for us because we can't take advantage of rollover to the spare capacity during busy periods) Again, they couldn't get it to work, and blamed our equipment. Again, we hired a contractor at our expense, and he worked with Bell to get them to get it working. (Different contractor, but same sorts of problems) basically we hired the contractor so we could have someone authoritative and knowledgeable to tell Bell that yes, our equipment was working fine, your circuits are wrong. They never believe us if we tell them that ourselves. This circuit was running for some months, but never actually signed off by Bell as finished.

So... some months later (Jan 2000) we start seeing CRC errors on the 3rd PRI. We do exhaustive tests proving without doubt that the errors are

coming from Bell. We call it in. (ticket no's sa716-758/sa716-805 - and don't get me started about how they'll refuse to open a ticket unless you'll agree to paying for an engineer visit - another trick to delay the opening time on the ticket to make the repair department look faster at solving the problems) They do a basic CRC test on the raw T1 between our office and their office, and declare there is no problem, it must be our equipment. The people doing this have no clue about ISDN-specific issues, and did not look any further into the Bell system than the raw wire. For 3 days all of our customers on that PRI are offline, while we struggle trying to find someone to take our complaint seriously. Then the problem clears up - they obviously fixed it, but when we call them to ask what happened, they deny they did anything. However, independent of our trouble ticket, we were contacted at the same time by another branch of Bell who had just noticed that they had never signed off on that circuit and were asking us if it was OK. It was clear the local people had done something and spotted us, probably when they broke our circuit. When we told them it certainly wasn't OK, that's when it miraculously got fixed.

However, these are MINOR complaints compared to what they do to our customers regularly.

When Bell cut over to a new switch, they broke just about every one of our customers ISDN connections in some way due to faulty translations at the new switch, usually to do with the way they had been set up for the local calling area. On one day we had about TEN trouble tickets open. For every single one, they denied any problems and said it was our equipment. (This was when I first butted heads with "Robert" out of the San Antonio office.) I pointed out that it was a bit suspicious that so many circuits were all down at once, and maybe it was Bell who had a problem. This Robert guy frequently got aggressive and insulting. It got to the stage when I was at one customers location that he refused to talk to me unless I could show him a Letter of Authority for us to act on behalf of our clients, and I had to put my client on the phone personally and tell him word for word what to say to this engineer.

He has been equally unhelpful every time since. Just last week when our PRI went down for three days, he was denying there was any problem and treating me like I was clearly an idiot. I asked to speak to a supervisor and was told he'd call next morning. For the next two days I had no call back, and I kept trying to get them and being put on hold. Finally I had enough of this and actually \*stayed\* on hold for the whole TWO HOURS it took. The receptionist kept coming back saying he was still busy, or stepped out the office, or 101 excuses, but I out waited her. I explained everything that happened,

he agreed it sounded like someone in McAllen had been tinkering and not owning up to it, and he'd look into it and find out what happened. Days later when I spoke to Robert again, his files showed nothing of any Bell culpability, just that it was our equipment at fault and we were to be charged for the engineer visit... The supervisor ("Vern") never did get back to me after that. (It's also very annoying that you can never get Bell employee's last names, or direct numbers, and if you do ever manage to make them tell you their email address, they only seem to check their email once a month or so)

Not all Bell support is like this (the guys who come to our location usually seem decent and try to help) but many of them are. Only once did I get a supervisor who knew what she was talking about and was not afraid to admit that Bell had a major screw up on their hands. (In fact she said she was only called in to handle the phones when something big was broken. This was the same day Robert was telling me it was all our equipment at fault - the time they cut over to the new switch - the problems went on for nearly a month as they broke account after account)

However their McAllen office manager is worthy of mention: R L Newsom. Bell don't ever give out private numbers of their staff - you generally have to have a long fight with the switchboard, explaining the same thing over and over to get to anyone. However one day I did manage to get the McAllen manager's number from someone. I did not use it for a long time, but the time we were offline for a week I was driven demented and after getting little success with everyone I tried, I phoned the head guy. This man never answers his phone or returns my calls. and he has to this date not once ever spoken to me, despite having left maybe half a dozen messages on his machine in the 5 years I've been here, asking to speak to him personally. He generally gets the lowest and most incompetent of his minions to call me back, and I get no satisfaction. (The case of the compensation for the weeklong outage being a classic example) After a time you get to know who in the McAllen office is smart enough to be of help and who is like talking to a brick wall with. (The latter outnumber the former by 4:1)

I've barely touched the surface of how often Bell have taken down a customer's line with no reason, and fixed it yet all the while denying responsibility - I suspect to be able to charge us for the engineer's visit. In most cases the problem is at the switch, not the wires. The linesmen are the only decent people I've dealt with at Bell, and they're usually the least to blame for the problems. I have many of the trouble tickets from previous issues on file if it'll help. The time that they screwed up the local calling area generated these tickets: sa700-811



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sa700-791 sa700-808 sa700-938 sa700-720 sa700-855 sa700-954

I have many others in my notebook.

All of these outages make Valley Tech look bad. If Bell were to admit to the problems in writing, we could show that to our customers and they would be less likely to hold it against us; however generally the fault is Bell's but it's us that looks bad. People jump ship down here at the slightest cause. Today, for example, I picked up a UUNet customer because his ISDN was down since Friday - according to the customer who spoke with both Bell and SWB, it was because SWB had executed a disconnect order on UUNet's PoP main ISDN number. I don't know the story behind that but it's typical of what happens down here.

I think it is much in Bell's interest to make ISPs look bad, so they can come in with DSL and push us out. Our T1 circuits have generally been much more reliable than our ISDN lines, and I expect DSL (after the installation is over) to be more reliable than ISDN too. Given that Bell's price to the user for DSL is less than we can buy it from wholesale from a CLEC that is trying to be run at a profit, I fear that the predatory pricing of DSL if it is allowed to be sold here in the Valley will put us out of business.

We also have one huge problem with POTS lines. We had 63 dialups and tried to remove 12 of them from service. The removal was botched and left our overflow line pointing to some poor old couple in McAllen. They 'fixed' it by pointing it to some other random phone that apparently isn't answered by a human as often, so the customers don't notice so much, but nowadays it is impossible to get a BUSY signal from VT, you only get a RING tone, so it looks like it's our service that's broken. Unlike with T1 or ISDN service where you can demand (after 15 minutes of arguing) that they open a trouble ticket, they REFUSE to open a trouble ticket for POTS lines, saying it is referred to only by the phone number. I spent so long trying to get them to fix this that I've now given up, and will just live with the problem until we eventually close all our dialups as we plan to do this year.

FYI we're paying for individual numbers on all these lines, but the individual number/test number is implemented only sporadically. They did not disconnect from the end of the hunt group as we asked, but from the middle, and some of the 'disconnected' lines still have dial tone, though I don't think we're being billed for them. (We're not using them; I put busy-out plugs in all the lines that were supposed to have been disconnected)

Overall the competence of Bell here is abysmal, but it's hard to tell if

it's \*\*\*\*\* or conspiracy.

PS: Why is it that a home SWB invoice is a model of clarity where you can see exactly what you're paying for, but a business invoice for t1/isdn/multiple pots is so impossible to decipher you need to hire a consultant to find out if you're being overcharged? We only recently discovered that we were being billed for some lines we thought were disconnected.

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## Declaration of J-Mag Guthrie

### On behalf of Brokersys

Tuesday, February 22, 2000

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Last August at the broadband conference in Austin, Texas ISPs were told by the SWBell rep that was present that if we couldn't do ADSL on our own, we should talk to our upstream and negotiate a deal with them. So, in November, I talked to my upstream, which has a DS3 connection to SWBell's ATM cell relay cloud, and it was agreed to let Brokersys co-locate a box on their site. I faxed the application for partnership to Evelyn Dorsey at SWBell sometime around the first week of December. I explained to her what we were doing and that it was SWBell's idea. I have yet to be approved as a DSL partner. She did call me on January 4th and said that she should know within a day, but I've not heard from her since and I have left messages on her voicemail.

Also, the \*reason\* we were even exploring this was because SWBell would not give us a partial DS3. We needed more than a T-1, but less than the full DS3. A \*real\* supplier would have been happy to do this. The reply I consistently received was "there is no tariff for this service".

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At the end of August 1999 I ordered an ISDN line to be installed in the house I was going to be moving to at the beginning of September, since I already had a Pipeline 75 ISDN router. While I was placing the order, the Southwestern Bell representative I spoke with, whose name I didn't make note of, tried very hard to sell me SWB DSL service instead, mentioning cost factors, reliability, speed, and other attractive features several times. Since I work for Information Broker Systems, a Houston-based ISP, I knew I would be getting my connection for free, and that, combined with the fact that I already had the router, meant that ISDN made more sense for me. Eventually I was able to convince her of that fact so I could proceed with the ISDN line order. As I remember, I was told it would take about two weeks for their crew to install the line. I also ordered the Additional Call Offering service so I wouldn't need to pay for a separate line to receive phone calls.

It took until October 4, 1999, for SWB to get the line installed and working the way I wanted. There were "problems", so the crew had to come back several times to complete the installation, and several weeks and multiple phone calls to get everything working properly. Apparently the representative had been so busy trying to sell me DSL that she had neglected to make note of my request for

Additional Call Offering, so I wasn't able to place or receive phone calls from home for weeks after I moved in. Also, the Call Notes service I had ordered was placed on the wrong channel of the ISDN line, and so did me no good at all, as that line is permanently connected to my ISP and so will always register as busy. After all that, I was billed for the ISDN line for September, even though I didn't have use of the line during that month. While a portion of this amount was eventually credited back to my account, it wasn't until after the line had been disconnected for non-payment. When I called to try to straighten out the bill, I was told that there had been no report of problems with the installation, even though I was able to provide the representative with the trouble ticket number.

It strikes me as unreasonable that Southwestern Bell should be able to both retail Internet and DSL service and be the only source ISPs can wholesale through. In other industries, the consumer is required to have a tax ID, reseller number, etc--in other words, to a business--before being able to purchase through a wholesaler, and exceptions should not be made for telephone companies. As it is, ISPs have to mark up whatever prices Southwestern Bell deigns to charge them, and also may not be allowed to partner for DSL if the ISP isn't big enough to bother with in Southwestern Bell's opinion. The ISP I work for has lost long-time customers because we couldn't provide them with DSL accounts, even though we had submitted the partnership forms to SWB. This is a practice that really needs to be investigated.

In addition, I did not receive a final telephone bill from the phone at my previous residence, and frankly didn't get organized enough to contact them to demand one. In January, I received a letter from SWB Collections saying that I owed them about \$180 for the old phone number. I had transferred my service, so they did have my new address, but they didn't bother to send a bill as far as I can tell, just referred it to Collections with a threat of disconnecting my current service. That just doesn't seem right.

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Our voice lines were disconnected on Monday, February 21 (Presidents' Day) for non-payment of a bill we never received. It's the final bill, including claimed termination liability charges from when we had our ISDN PRI lines switched to a CLEC and I didn't even see the final bill till they faxed it to me at "previous bill" which it claims we owe \$80k (our regular bill is around \$6k for that account). The PRIs were billed separately from the voice lines. I did not receive a 10 day notice.

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**Declaration of Ingrid Kast Fuller  
on behalf of City Scope Computer Services**

Tuesday, February 22, 2000

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I signed a 5 yr contract for the ATM circuit on Wednesday, February 9th, with the understanding that I would be a SWB Agent and receive commissions for selling DSL lines and that I would charge a reasonable amount for Internet access at the same rate of \$10 per month in order to make this a profitable venture. On Friday, February 11th at 5pm, I received a call from Kim Poores, SWB Agency rep saying they were reducing the Internet and DSL lines to \$39.95 and giving the equipment free along with free installation. Now they took away any Internet access fees and I can not be profitable. I immediately told her that they need to come up with some compensation for us ISPs. She said that they were working on some compensation and would get back with me on Monday, February 14th, which they did not. I repeatedly called Kim Poores, finally called my other rep, Lauren Blumenfeld which said she would call Kim's boss. Then after not getting anywhere, I called Kim's boss and also Lauren's boss.

Both of which did NOT call me back. Finally after Kim received this letter she told me that this letter along with many complaints were sent to the President and that she promised that she would be getting back with us on Monday, February 21st with details. I called Kim on Monday, she went on vacation for two days. I called her boss and another rep that the calls were forwarded to and both returned my call saying there would be an email forthcoming. Later in the day I get CONTEST information saying I have to sell 100 DSLs, etc... in a short-time frame of 5-6 weeks. Our ATM circuit goes up tomorrow and the agreement they want me to sign "DSL Partnership Program Agreement" which was sent to me

after I signed the 5yr ATM circuit agreement, pretty much says they can do whatever they want and I won't make any money. This whole situation is forced on us because we have to have DSL services to keep our customers and to continue to grow and prosper. This unfair advantage that SW Bell and SW Bell Internet Services has over us needs to stop.

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Declaration of Lori Brax  
on behalf of Informatics Corp.

Tuesday, February 22, 2000

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As Agents of SWB, we take pride in having the name SWB behind our business. We have set our sales goals high and have so far met our criteria. However, it is very difficult as a new sales agent to accept what has SWB has done with Project Symphony. As a result, we have lost many potential customers because they have signed up directly with SWB for DSL services. In what is to be a mutual benefiting partnership, we find that SWB is undercutting our power to generate new sales. Not only does this make it difficult for the sales agents to make sales, but it also makes our customers question the integrity of SWB. The point being if SWB undercuts "one of its own", then what kind of company is this? Our customers that have placed orders with us, in spite of Project Symphony, have asked us this and they question the motivations of SWB. How will SWB treat their customers if they have done this to their trusted sales agents? As sales agents, we are to sell SWB services, it is very difficult to do this when SWB undercuts our prices and we are not allowed to at least offer the same. Please help us resolve this issue so that we may maintain a mutually profitable agreement.

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**Declaration of Mark Allen**

on behalf of ImagiNet Communications

Tuesday, February 22, 2000

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We are a partner with SWB for it's ISP reseller of ADSL program. Back last summer when we signed up we were told that we would be sent referrals on a regular basis, and we were. Around October they dried up, and we have not gotten another since. During the original presentation we were told that if a customer called and did not have an ISP, they would be presented with a list of ISPs and they could choose from them. SWBIS would be one of those ISPs and would be treated exactly the same as any other ISP.

I called about the dearth of new customers today and Kim Poors, manager of the Parnership program told me that the procedure was "If the customer does not have an ISP, SWBIS is suggested first, and if they choose not to take SWBIS, the list of 'other' partners is then presented".

We HAD a customer with an order we placed for ADSL service. The customer called us to cancel the order. (SWB went ahead and canceled the order we had in the CPSOS system without our knowledge.)

We asked why and were told that they were called by SWB with the offer mentioned below. I am extremely concerned about SWB calling our customer list, and making them offers that we can not match because of them bundling services like this.

We will gladly take part in any legal remedies that we might have. Please let me know if anyone is already starting legal action, or if we should call our lawyers to get it started. At this point, i fail to see the cost effectiveness of us advertising ADSL service, only to have SWB take the customer away from us. This is not just anti-competitive, it is reprehensible.

What do we have to gain by being partners with SWB? Just an advertising loss?

We sold a new customer on ADSL service.

Customer: Alexander J. Pauliah  
4815 Westgrove Drive #107  
Addison, Tx 75001

We entered the data in CPSOS (we are an ADSL partner).  
We received an install date of 2-17-00

The customer called us to cancel the order on or about the 14th. When asked why, we were told that SWBIS had contacted him with the offer of \$39/month (the SWB fee) with no additional fees for internet service from SWBIS, and free installation with free hardware. He then told SWBIS (of course) that they had the better offer, and that he would take them up on it. He did not contact us to see if we could better their offer, i am assuming here that the SWBIS sales persons left him with the impressions that we could not better it, since he did not call for that, but called to cancel.

SWB canceled our order in CPSOS without our knowledge or consent.

I have full details as far as what userids accessed the order in CPSOS, as well as the hardcopy orders and LOA from Alexander. We are currently considering all/any options. Please feel free to call me any time today before 5pm, i am leaving for Minneapolis at that time, and will not return till the weekend.

We have a mutual friend/acquaintance in Larry Davis, so please feel free to call me at 817 516 0037 (our tech support line) to have me paged. (i normally would not give out that number to non-customers.) They will send me a phone number to call you back on.

I can not overstate how upset i am with SWB over this issue. Thank you in advance for bringing this to the attention of anyone who can do anything about it. I will do whatever is necessary to ensure that SWBIS does not continue predatory practices like this one.

We need FCC help! Our loss of revenue has been extreme.



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**Declaration of Marc Newman**

**on behalf of BLKBOX.COM**

Tuesday, February 22, 2000

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We are a partner with SWB for it's ISP reseller of ADSL program. Back last summer when we signed up we were told that we would be sent referrals on a regular basis, and we were. Around October they dried up, and we have not gotten another since. During the original presentation we were told that if a customer called and did not have an ISP, they would be presented with a list of ISPs and they could choose from them. SWBIS would be one of those ISPs and would be treated exactly the same as any other ISP.

I called about the dearth of new customers today and Kim Poors, manager of the Partnership program told me that the procedure was "If the customer does not have an ISP, SWBIS is suggested first, and if they choose not to take SWBIS, the list of 'other' partners is then presented".

I think we definitely have grounds for legal action. Has any other ISP noticed this major change in the program which was slipped in without any notification? Our loss of revenue has been extreme, to say the least, and this situation is going to either correct itself or we will be taking them on.

I suggest anyone interested in this post to the list or email me. Class action definitely seems appropriate.

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**Declaration of Shayla Taylor**

**on behalf of Brazoria Dot Net, Inc.**

Tuesday, February 22, 2000

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I lost my Bay City, Texas, circuit at 12 am Saturday, just as SWB Switched over to the new area code (went from 409 to 979, although there is Supposed to be a 6 month switch over period where you can use either area code). SWB first told me their database was down, and they would call me back. When I called later in the morning, they told me there was no such number as my dial in number in their system - we eventually found it using the new area code. Then they told me I had a cut line, and they wouldn't repair it until MONDAY. I asked for the supervisor, to override this time schedule since I needed it NOW (the customers were calling up constantly on my tech support number, and some even reported that SWB said it was my equipment that was the problem), but was told, not until Monday. I called my SWB rep at home and she worked on it until late Saturday night, but they gave her the same response. We were told that there is no tech available for repairs in Bay City on weekends, even for 24 hour businesses.

I noted that the message that the customers got was "This line has been disconnected or is no longer in service", which is not the symptom of a cut line. My SWB rep agreed and managed to talk to some more knowledgeable people at SWB on Sunday, and there was evidently a similar problem somewhere else. It was clear to my rep that there was a problem with the upgrade to the new area code, so SWB continued working on that. My line was finally back in service around 8 pm on Sunday.

As of today, it is left up to me to figure out how many customers I have lost and what the cost is to my business. Customers don't like to hear that the line is no longer in service - they think that I didn't pay my bill. The fallout from this may be critical to my business.

Shayla Taylor  
Brazoria Dot Net, Inc.  
www.brazoria.net

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**Declaration of Tim Beard**  
**on behalf of DATA RECALL, LLC**

Tuesday, February 22, 2000

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Let me describe one of the disadvantages of being a DSL partner with Southwestern Bell.

After we spend over \$1700 per month for our ATM connection to SWB in order to resell the DSL service (an excellent way for SWB to sell their ATM product) we started to work on qualifications for our potential customers. Kim Poores at SWB told us it would be 5 to 7 working days. We filed approximately 50 loop qualifications through the SWB CPSOS system. The majority of these quals took over a month to get qualified. Some of them were lost in the system (according to SWB). I repeatedly called and emailed all the SWB contacts I had regarding this and got no replies until about a week ago.

Now, here is the EXTREMELY DISTURBING part. Some of our customers called SWB directly and got their own lines qualified in a week or less. We even lost two business accounts to SWB because we could not get an answer on qualification in a reasonable length of time.

Here is a second .

We ordered DSL for an existing business customer that had a permanent ISDN connection to our network.

Last week I get a phone call from the MIS director at the business. He was extremely upset because he was told we were selling his company something that would not be adequate for his network needs. After discussing this with him, I found out that the SWB installer that went to his site to install the DSL product told him that the low speed DSL would not be enough for his network and that Data Recall should have ordered the higher speed DSL for his company. I explained to the MIS director that the DSL was more than twice the bandwidth as his current ISDN connection to us.

I take offense when a telephone company installer tells my customer what product he should have. These guys have very little networking experience as far as TCP/IP protocols go. Not to mention the fact that the installer in effect told my customer we didn't know what we were

doing.

So, to review, this is how I am supposed to compete with Southwestern Bell on the DSL product. First, my customer qualifications take longer than the ones that SWB has. Second, SWB goes around to my customers telling them we don't know what we are doing. Now, to add insult to injury, if a customer orders DSL through me, he gets to pay \$198.00 for his DSL equipment, and \$39.00 per month for his DSL to SWB. Then he gets to pay me money ON TOP of those charges for the internet bandwidth. If he goes with SWB he gets faster qualification, free equipment and a TOTAL charge of \$39.00 per month, bandwidth included.

Gee, I wonder which company the customer will go with?

There is no level playing field here. Nobody is making money but SWB. I don't care what they say about their internet company being a different entity, etc. They are one in the same.

I would be better off if Southwestern Bell put me out of business by just burning down my offices. At least that way, it would be quicker and I would not lose as much money.

I thought small businesses were the backbone of the American economy. This is apparently not the case in Texas. If you are big, you get to treat the other guy as you see fit.

Finally, to put the icing on the cake, the state lets them sell long distance. I cannot believe it. What is next? I shudder to think about it.

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**Declaration of Todd Jagger**

**on behalf of Overland.net**

Tuesday, February 22, 2000

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SBC's anticompetitive actions, through SWBT, against ISPs in the following ways:

Jeff Davis County #1 - Phone service out St. Hwy 166 could not be considered data quality. According to the local engineer this is because the switch/pairgain will not handle any speeds higher than 14.4 at best to that area. Most customers do not even get that. The primary population center out that way is the Davis Mountains Resort - a subdivision with around 150 full time residents and about that again in part-timers. In addition to the DMR, there are a number of ranches out Hwy. 166 who also have or would like service from Overland. Overland has maybe 25 or so customers in the DMR, and would have more if they could get decent line quality. Customers experience frequent disconnections, inability to connect at all (line noise) and often diminishing data throughput if they do get connected (throughput "spirals" down until no data is sent/received and connections either time out or are disconnected).

According to a regional engineer he has submitted upgrades for this area in each year's budget since 1996. These improvements have always been turned down by SWBT execs as too costly for the number of customers they would benefit.

Jeff Davis County #2 - At least two customers have requested ISDN (BRI) connectivity to the DMR. One customer (Andy Williams - paw@overland.net) ordered the service, was given a work order and due date. When the due date passed he contacted SWBT to inquire what the deal was. They told him they could provide the service to his home but would have to charge him a \$7500.00 "Custom Construction" fee. This does not make sense as it is NOT custom construction but really the fact that their switch/pairgain won't handle it - \*that's\* what they'd have to upgrade in order to provide ISDN to the DMR (to my knowledge). Another customer (Carlos Leal - cleal@overland.net) also requested ISDN and met with same.

We cannot get PRI out here at all in any of our locations. This is so even through the Texas PUC rules require all ILECs to provide ISDN throughout the state (PUC Rule 26.142 - <http://www.puc.state.tx.us/rules/subrules/telecom/26.142/26.142.cfm>) SWBT reps state that it will be "several years, if ever" before we can get PRI. "There are no plans at this time to make PRI available to your area."

We \*can\* get Channelized T-1 (SWBT product called "Access Advantage Plus") but the cost for that service is approximately 2X (or more, depending on the location) of POTS lines on a per-line basis.

**Declaration of Dewey Coffman  
on behalf of Jump.net**

Tuesday, February 22, 2000

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Presented below are some of the “log” entries from Jump.Net’s customer logging system which shows the great pains involved in trying to get customers turned on with SWBT’s ADSL product.

What is not shown, after being denied service from Jump.Net using SWBT’s tools in failing to qualify them, is how often these customers call back and are now hooked up with SBIS.

More often than not, orders are lost, frequently several times. Yet, it appears that this problem does not happen internally between SWBT & SBIS.

The anti-competitive nature of the DSL line pricing problems seems obvious. The more damaging nature of the SWBT ADSL Partner program comes from the sheer human demands it places on the ISP Partner, to make sure SWBT doesn’t drop the ball and follows through on orders once the customers are sold. Clearly, the internal infrastructure of having both side of their business, selling, pushing and installing DSL does not seem to prevail in the partner program. The SWBT Partner program groups are always understaffed, and backlogged with orders, forcing the small ISP to take up the slack. Case in point, the latest pricing changes were announced to ISP on a Friday (contiguous with SWBT’s press package). The partners were told additional information would be distributed the following Monday. A solid week passed before meaningful information was actually given. Meanwhile call volume to Partners is significantly dropping and

SBIS' mind-share is going through the roof. Can SWBT claim incompetence here, or intent?

ISDN line marketing: SBIS and SWBT jointly market directly to customers with ISDN lines. The list is not available to ISP Partners despite many requests. This puts non-SBC entities attempting to market SBC services at a distinct advantage, and allows SBIS to call our customers. We are never given any list of SBIS' customers.

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06/08/1999 Cancelled AARO0001 Aaron Marco  
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Updated by: howardb Mon Jul 12 12:59:51 US/Central 1999

Cancelled, current customer:

**SWB said that there was a 'Bridge Tap' on his line and it would require 'Line Conditioning' (\$900). I have canceled this order with both JP & SwB.**

-----  
01-20-2000 Cancelled AARO0005 Aaron Kattawar  
=====

Updated by: dstuckey Thu Feb 17 12:02:59 US/Central 2000

Cancelled, current customer:

**SWB said that they cannot do ADSL.**

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11-11-1999 Cancelled BRIA0010 Brian Keenan  
=====

Updated by: howardb Tue Nov 23 9:27:59 US/Central 1999

From: "PATTERSON, MARY P (SWBT)" <[MP1119@txmail.sbc.com](mailto:MP1119@txmail.sbc.com)>

Subject: RE: Brian Keenan (BRIA0010) 4750 Haverwood Ln. Apt 1307

Date: Mon, 22 Nov 1999 11:53:03 -0600

Your DSL service order has been processed. Log # 107873 has been assigned order # C094116, installation due on 12-08-99, ISP work order test date 12-02-99.

-----  
Updated by: howardb Fri Dec 3 9:50:53 US/Central 1999

From: "PATTERSON, MARY P (SWBT)" <[MP1119@txmail.sbc.com](mailto:MP1119@txmail.sbc.com)>

Subject: Order to be canceled due to pair gain

Date: Fri, 3 Dec 1999 08:26:31 -0600

We have been informed the your ADSL order C094116 for Brian Keenan at 4750 Haverwood Ln, Dallas TN 972 267-0423 has pair gain in his community and we will not be able to install ADSL service for this location. Please update your records to show order cancelation and inform your customer. We apologize for this inconvenience and hope to offer ADSL to your customer again in the near future when we implement new upgrades to our network and field in 2000. Let me know if you have questions

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kester 11-16-1999 Cancelled BRUC0004 Bruce Kester  
Updated by: travis Mon Jan 17 9:40:55 US/Central 2000  
=====

Cancelled, current customer:  
**Customer needs line conditioning and could not get ADSL.**

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09-23-1999 Cancelled CAMT0001 CAMTEK Instrument, Inc.  
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Updated	by:	george	Fri	Jan	21	12:32:06	US/Central	2000
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Cancelled, current customer:  
**Customer tried for several months to get service set up but SWB continually had problems getting the circuit up. Now however he has signed on with SBIS and they have assured him they can get him on line sometime next month. I explained to the customer that he could choose to go with Jump.Net and not lose his install schedule but he said they were cheaper.**

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08-26-1999 Cancelled CLAR0015 Clark Gabriel  
=====

Updated by: dstuckey Mon Sep 13 13:53:08 US/Central 1999  
Cancelled, current customer:  
**Behind fiber. No ADSL.**

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10-14-1999 Cancelled DALL0002 Dallas Multimedia  
=====

Updated by: travis Fri Nov 26 9:15:08 US/Central 1999  
**customer was qualified by COG..ordered service..COG then said he cannot get service**



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10-21-1999 Cancelled DANI0010 Daniel Jaffee  
=====

Updated by: travis Mon Jan 17 9:37:48 US/Central 2000

Cancelled, current customer:

**Customer wanted DSL but did not want to pay for line conditioning.**

-----  
11-22-1999 Cancelled DANN0002 Danny Sheaffer  
=====

Updated by: virginia Tue Dec 28 15:54:04 US/Central 1999

danny called and wanted to cancel his service, we are sending it to sale, we will let them take care of it.

s guy was behind fiber, so he never got hooked up

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10-06-1999 Cancelled DONA0005 Donald E. Bartholomew  
=====

Updated by: howardb Mon Oct 25 9:49:40 US/Central 1999

Cancelled, current customer:

From: "Bartholomew, Don" <[dbartholomew@alexanderogilvy.com](mailto:dbartholomew@alexanderogilvy.com)>

Subject: RE: Your ADSL line will be installed on: 10/22/99

Date: Fri, 22 Oct 1999 13:40:16 -0500

Howard,

Bad news. The SW Bell guy came today and they will NOT be able to provide ADSL service at my home location. Our CO is on Bryan Street and we are 2000 feet away. SW Bell will only commit to 1600 feet. He checked the signal strength at the pole and it was unacceptable. He predicts January before enough FO cable is laid to make it work. So, I will not need service through Jump.Net. Call me with any questions. Sorry, DB

Don Bartholomew, Executive Vice President & General Manager  
Alexander Ogilvy Public Relations Worldwide  
Dallas, Texas

-----  
10-12-1999 Cancelled DONH0001 Don Harris  
=====

Updated by: dstuckey Tue Oct 19 10:01:34 US/Central 1999

Cancelled, current customer:

**Line needs conditioning. Not interested in Covad's price.**

-----

e360 09-07-1999 Cancelled E3600001 E360 Corporation  
=====

Updated by: dstuckey Mon Nov 8 17:07:30 US/Central 1999  
Cancelled, current customer:

**Line was originally approved, then denied due to length.**

-----  
12-07-1999 Cancelled ELIZ0002 Elizabeth Diggs Goss  
=====

Updated by: buck Thu Dec 23 9:29:56 US/Central 1999  
"MORGAN, NORMAN L (SWBT)" wrote:

>

> **Order C034829-Log 138146--512 477-6811-Elizabeth**  
> **Diggs-despite his best efforts, technician not able to install ADSL at this**  
> **location. We have canceled the order. Please advise your customer.**  
=====

Updated by: travis Mon Jan 17 9:45:56 US/Central 2000  
Cancelled, current customer:

**Customer needed line conditioning.**

-----  
02/24/1999 Cancelled GREG0002 Gregory D. Blankenship  
=====

Updated by: dewey Wed Feb 24 20:24:24 CST 1999  
Cancelled, current customer:

**Decided to go with SWB Internet cause it was cheaper.**  
-----

09-19-1999 Cancelled GREG0005 Gregory Rivas  
=====

Updated by: buck Thu Oct 14 13:05:20 US/Central 1999  
This location showed yellow on CPSOS.  
Tracking # 62101  
=====

Updated by: buck Wed Oct 20 13:03:15 US/Central 1999  
I also submitted a loop qual from the webpage today.  
Request code: QUAL19991020041  
=====

Updated by: buck Thu Oct 28 10:06:35 US/Central 1999  
Cancelled, current customer:

**Got ADSL through MDSL? This was never set up completely.**

-----  
09-23-1999 Cancelled JASO0005 Jason E. Otto  
=====

Updated by: tony Fri Nov 5 9:25:28 US/Central 1999

Cancelled, current customer:  
**Didn't qual for ADSL...**

-----  
05/14/1999 Cancelled JCHR0001 J. Christopher Bryant  
=====

Updated by: howardb Tue May 25 15:17:03 US/Central 1999  
**Cancelled, current customer:  
pair-gain**

-----  
jesses 10-07-1999 Cancelled JESS0005 Jesse Salinas  
=====

Updated by: dstuckey Fri Oct 15 14:37:53 US/Central 1999  
Cancelled, current customer:  
**EPC says that they owed them money and it was cancelled. They were never up with us.**

-----  
05/20/1999 Cancelled JOEM0002 Joe Martinez  
=====

Updated by: howardb Thu Jun 10 18:18:49 US/Central 1999  
Cancelled, current customer:  
**Joe Martinez (jmartinez) said that someone was charging calls to his telephone line and refused to pay for it so SWB disconnected his line. Without a SWB phone line, no ADSL.**

-----  
9-3-1999 Cancelled JOHN0042 John Comer  
=====

Updated by: howardb Thu Oct 14 20:33:26 US/Central 1999

From: "WHITE, RICH (SWBT)" <[RW6873@txmail.sbc.com](mailto:RW6873@txmail.sbc.com)>  
Subject: RE: John Comer 6950 Eubanks St. Suite A-2  
Date: Wed, 13 Oct 1999 15:15:31 -0500

The wait is finally over!

Due to the presence of fiber optic cabling in the Mr. Comer's central office, he will have FTTC-DSL service (fiber to the curb) as opposed to ADSL (which uses the standard copper wiring). The order establishing this service will be N095753 with an installation date of 10/22/1999. Tests from the central office will be conducted on 10/19/1999 -this will not involve the customer.

The customer's new telephone number, XXXXXXXXXX, will be non-published. Please be aware DSL service is not guaranteed until it is physically tested at the time of installation. If you have any questions please call 800 308-9488.

Thank you and Mr. Comer for your patience,  
Rich White

Event scheduled for 10-22-1999

=====  
Updated by: howardb Mon Oct 18 18:07:42 US/Central 1999

From: "WHITE, RICH (SWBT)" <[RW6873@txmail.sbc.com](mailto:RW6873@txmail.sbc.com)>  
Subject: John Comer  
Date: Mon, 18 Oct 1999 12:42:43 -0500

Howard:

We had to change the telephone # for this customer. The new number is  
XXXXXXXXXXXX. Telephone numbers, like ADSL service, are not guaranteed until the  
service is installed and working. That being the case, it could change  
again.

=====  
Updated by: howardb Thu Oct 21 18:27:41 US/Central 1999

From: "WHITE, RICH (SWBT)" <[RW6873@txmail.sbc.com](mailto:RW6873@txmail.sbc.com)>  
Cc: "RUEDA-WIEBERSICK, YOLI (SWBT)" <[YR1187@txmail.sbc.com](mailto:YR1187@txmail.sbc.com)>  
Subject: John Comer --URGENT!!!!  
Date: Thu, 21 Oct 1999 08:27:20 -0500

Howard:

I left word with you yesterday regarding the problems we are experiencing with this  
account (order # N095753). The due date is scheduled for tomorrow, but will not be able  
to keep the date. The customer has an outstanding balance with Southwestern Bell, which  
will have to be paid before we can establish the service.

Please call me as soon as possible.

Thank you,  
Rich White

=====  
Updated by: george Fri Jan 21 12:44:19 US/Central 2000

Cancelled, current customer:  
**SWB was not able to offer service to this location and he doesn't qualify for Covad  
or NorthPoint**

-----  
09-23-1999 Cancelled JOHN0059 John McIver  
=====

Updated by: howardb Wed Oct 6 19:54:45 US/Central 1999

<<<< Start ADSL billing today >>>>

From: "COOPER, DEMETRA M (SWBT)" <[DC8429@txmail.sbc.com](mailto:DC8429@txmail.sbc.com)>  
Subject: FW: [JPsales #8255] John McIver 5113 Bandera Creek Trail Order C8  
52834  
Date: Tue, 5 Oct 1999 15:39:12 -0500

Your DSL service order request has been received and processed. LOG# 202859 has been assigned order number C852834, and it is due 10-20-99, however, DSL service cannot be guaranteed until we have had the opportunity to physically examine the line at the time of installation. Your work order test date is 10-13-99. If you have any questions, please call 800 308-9488. Thank you.

Event scheduled for 10-20-1999  
=====

Updated by: jkmoseley Thu Oct 21 16:36:58 US/Central 1999  
**Cancelled ADSL service SWB said they could not get it.**

-----  
09-29-1999 Cancelled JOHN0060 John Minakais  
=====

Updated by: buck Fri Oct 1 9:44:50 US/Central 1999  
"WHITE, RICH (SWBT)" wrote:

>  
> Steve:  
>  
> This customer is with another local service provider. He has 2 options if he  
> wants to proceed: either 1.) convert line to Southwestern Bell or 2.)  
> remain with current local service provider and establish a new POTS line  
> with Southwestern Bell after providing appropriate credit information.  
>  
> Please let me know what action the customer wants to take.  
>  
> Thank you,

> Rich White

=====  
Updated by: buck Fri Oct 1 10:52:55 US/Central 1999  
"WHITE, RICH (SWBT)" wrote:

>  
> Our system checks by address only -it does not distinguish between Bell and  
> non-Bell accounts.  
>  
> After looking into this more, I have discovered the customer is in an apartment  
complex that has wiring owned by another local service provider.  
> At this point, we cannot provide ADSL service to facilities with separately  
> owned wiring. Bell is working on a device to overcome this obstacle, but it  
> has not been deployed yet. You might want to try this account in another  
> month or so.  
>  
> I apologize for the confusion. If you have any questions, please call 800  
> 308-9488.  
> Rich White  
>

=====  
Updated by: buck Fri Oct 1 13:23:36 US/Central 1999  
JM wrote:

> Steve,  
> In the meantime I've changed my telephone service at home. I'm now with SW Bell  
instead  
> of the local service. The new number, effective Tuesday, is 210-697-9930. Pass this on  
to  
> SW Bell as it might help make the installation easier.  
> John

John is getting a SWB POTS line, information has been forwarded to the COG.

=====  
Updated by: buck Thu Oct 7 12:16:45 US/Central 1999  
**The order adding ADSL service to the customer's account (XXXXXXXXXX) is  
C035826 with an installation date of 10/18/1999. We will test the line in order to  
ensure it can sustain ADSL bandwidth on 10/13/1999--this will be  
done from the central office and will not involve the customer.**

Please be aware ADSL service is not guaranteed until it is physically tested at the time of  
installation. If you have any questions please call 800 308-9488.

Thank you,  
Rich White

=====  
Updated by: buck Thu Oct 7 12:17:53 US/Central 1999

ADSL install date. Mon. 10/18/1999  
Event scheduled for 10-18-1999

=====  
Updated by: buck Thu Oct 7 12:22:15 US/Central 1999  
Left vmail for John with install date.

=====  
Updated by: buck Tue Oct 12 14:43:18 US/Central 1999

**Rich from SWBT called to inform the order must be cancelled. The Apts "own the wiring" and even though its a SWB billed line, they cannot install a splitter. They (SWB) is expecting a device called n-line filter (?) that will solve this but soonest availability is 6 weeks. Rich will check then.**

=====  
Updated by: buck Tue Oct 12 14:53:07 US/Central 1999

Cancelled, current customer:

**ADSL service never out of Wait state. After getting all the way to an install date, SWBT says they cannot install a splitter in his Apt. complex as it is owned by another lsp. There may be a device called a N-line filter (sp?) available in 6 + weeks to get around this. That is all for now.**

=====  
Updated by: buck Tue Oct 19 10:49:17 US/Central 1999

Removed scheduled event

SWBT cancelled install.

-----  
11-24-1999 Cancelled JOHN0073 John Dahlheim

=====  
Updated by: george Thu Dec 9 10:14:53 US/Central 1999

Cancelled, current customer:

**Customers Line had to be conditioned and they didn't want to pay for it unless we could guarantee it would work.**

-----  
Vaderslice and Davila 12/10/99, Was yellow, needed conditioning, yet called

SBIS and got a green and got installed.

---

Ron Zagarri  
512-236-8445  
1406 Windsor Rd #202  
Austin, Tx 78703

Apparently the same thing happened with this guy that happened to Clark. SWBell sent him new equipment and then when the installer came out he left the customer with used equipment. Cliff also told me that SWBell lost this order 3 times before finally typing it up and getting an install date for it. I'm aware that SWBell lost it once for sure.

Travis Heidenreich - Jump.Net Inc.  
7218 McNeil Dr, Suite 205  
Austin, TX 78729  
512-532-2255 (Direct)  
1-888-249-4375 x1055 (Toll Free)  
512-532-1955(Fax)  
[travis@jump.net](mailto:travis@jump.net)  
[www.jump.net](http://www.jump.net)

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LKJO0001 - see the logs.

CAPI0007 - sent in order, went to engineering, order not placed

WAYN0003 - sent in order, went to engineering, order not placed

RONZ0001 - I sent in the order in three times with nothing being done. I had to call Bell and have them input it with me on the phone to get it done.

POWE0007 - submitted on 2-9, SWB has no record of the order, they lost it

VINC0006 - EPC order - sent three times, never placed, had to call to get it placed  
LKJO0001 - see the logs.

CAPI0007 - sent in order, went to engineering, order not placed

WAYN0003 - sent in order, went to engineering, order not placed

RONZ0001 - I sent in the order in three times with nothing being done. I had to call Bell and have them input it with me on the phone to get it done.

POWE0007 - submitted on 2-9, SWB has no record of the order, they lost it

VINC0006 - EPC order - sent three times, never placed, had to call to get it placed



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**Declaration of Dan Eason on behalf of Rural Networking Partners, LLC  
d/b/a Hilconet and DelRio.com (“Rural”)**

Tuesday, February 22, 2000

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On or about August of 1999, Rural contacted SWBT and attempted to order ISDN PRI service in Uvalde and Brackettville, Texas. Agents for SWBT informed Rural that local PRI service is not available in Uvalde or Brackettville and that only channelized T1 service could be provided. SWBT is required by rules of the Texas Public Utility Commission (“TPUC”) to make local ISDN PRI service available throughout the state. *See*, 16 TAC § 26.142(c). The representation that ISDN PRI is not available in Uvalde and Brackettville must be false, or SWBT is knowingly and intentionally violating the PUC rule. In reliance on the representation on non-availability, Rural ordered channelized digital T1 lines, which are more expensive but provide less functionality.

Around October, 1999, SWBT agent Charles Gamble contacted Rural and offered to sell Rural a new service called “Local Plus.” According to Gamble, Local Plus is an extended local calling plan that costs \$60 per month for the 1<sup>st</sup> line and \$10 per month for each additional line. Rural ordered the service for its administrative lines, and inquired if the service could also be used for the “dial-up” lines that are used to provide enhanced services (including Internet access) to Rural’s customers. Rural also asked if Local Plus could be used in combination with Call Forwarding, so that calls from customers to local lines could be forwarded to equipment in San Antonio. Mr. Gamble (and others at SWBT) assured Rural that this was absolutely permissible. Rural ordered the service. In further reliance on the representation, Rural obtained expensive equipment for various locations, including San Antonio.

SWBT would not or could not get the service to work properly. Service was disconnected; Rural’s customers experienced busy signals; intermittent hunt group problems were experienced. In mid-November SWBT, for the first time, told Rural SWBT’s tariff allegedly prohibits using call forwarding in association with Local Plus. The service was therefore denied. Rural denies that the tariff prohibits use of call forwarding in conjunction with Local Plus. In any event, Rural also requested that SWBT allow Rural to order 1+ Direct Saver rather than Local Plus, and call forward to San Antonio. SWBT asserted that this too was not allowed by the tariff. Rural also disagrees with this tariff interpretation.

Rural has sustained significant economic harm as a result of SWBT’s actions. In addition to the higher cost services, equipment, rental space for the equipment, and volume/term contracts for services, Rural has lost customers, has not been able to attract new customers, and was forced to give rebates to existing customers as a consequence of low quality service directly related to the problems caused by SWBT. Rural also had

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been in discussions with parties interested in acquiring Rural, but the ongoing difficulty with SWBT has significantly reduced the valuation of Rural by potential purchasers.

To mitigate further damages (which exceed over ½ million dollars to date), Rural executed certain contracts with SWBT for a different and not functionally equivalent service that partially addressed Rural's service quality problems.

SWBT offered to solve all these problems by offering V-POP service from SWBT or its data affiliate. During conversations with SWBT personnel, we learned that V-POP would be provided by modems located in San Antonio. In other words, SWBT will use the same or very similar configuration (expanded inbound local calling arrangement) to switch and transport the calls to the modems that SBC will manage for Rural. (SWBT indicated that it cannot at present use its packet switched network between our service territory and San Antonio to provide V-POP, so the traffic will go over the PSTN. At some point the traffic would be diverted at the end office level to the packet network for transport to San Antonio.) SBC has refused to allow Rural to obtain the same service as is used for V-POP, but without use of SBC-provided modems in San Antonio. In other words, in order to obtain wide area dial-in capabilities using its own modems, Rural must expend huge sums for T1s, forego use of PRIs, and buy dedicated bandwidth to San Antonio. Or, it can use SBC's V-POP and obtain wide area network access at a significantly reduced price.

SWBT has made it extraordinarily expensive, if not impossible, for Rural to provide quality Internet access in South Texas without giving up total control of our modem banks and essentially becoming even more dependent on SBC for our network access.

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**Declaration of Chad Kissinger on behalf of Onramp Access, Inc.**

Tuesday, February 22, 2000

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Chad Kissinger  
President  
Onramp Access, Inc.  
211 E. 7<sup>th</sup> Street  
Suite 1200  
Austin, TX 78701

Onramp Access is an ISP operating in Austin, Dallas, San Antonio and Houston TX. On September 23, 1999, Onramp signed a partnership agreement with Covad to offer Quality of Service guaranteed DSL access to our customers in these markets. Onramp chose to form a partnership with Covad instead of Southwestern Bell so as to strongly differentiate its offerings from those offered by the Southwestern Bell Telephone/Southwestern Bell Internet Service alliance. As a result, Onramp is the only provider in these Texas markets that offers a Quality of Service guaranteed Symmetrical DSL connection with free Firewalls and virus filtered e-mail. Additionally, Covad and Onramp offer DSL access to customers as far away as 40,000 feet from the local Central Office. Southwestern Bell only delivers ADSL access to customers within 17,500 feet of their local CO. In effect, because Onramp and Covad exist in the market, business customers have the opportunity to purchase business class Internet access services that are distinct from those offered by any of our competitors, including Southwestern Bell Telephone. Simply put, for an entire class of business customers in Austin, Dallas, San Antonio and Houston, the Onramp/Covad partnership is the only source for suitable DSL Internet access.

Unfortunately, our experience has been that Covad's reliance on Southwestern Bell Telephone's participation in provisioning and maintaining DSL connections has prevented us from effectively delivering these services to our customers. Although we are realistic about the problems inherent in provisioning DSL access, the problems we are experiencing with Southwestern Bell Telephone seem to be part of a concerted effort to prevent us from competing in the Internet access market.

We have included detailed examples of problems that we are experiencing with provisioning DSL lines through Covad that are seemingly due to interference from Southwestern Bell Telephone. Rather than being exceptional cases, these examples are truly representative of our experience with Southwestern Bell Telephone. Our problems with Southwestern Bell Telephone seem to span their organization from marketing to provisioning and installation. We have quite a great deal of anecdotal evidence that suggests that these problems are not isolated incidents, but rather are a part of an integrated plan to take our customers. Many of the problems we experience are coincidental with specific, directed marketing efforts from Southwestern Bell Internet Service for the same customer. Often, while we are in a long, protracted process of working on a problem account, our customers are contacted by Southwestern Bell

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Internet Service salespeople promising installation within 3 to 4 weeks. We have yet to successfully install even one DSL line in this time frame.

Our problems are widespread. We have had instances where, after sixty days of working through Covad to fix a problem order, Southwestern Bell Telephone claims that they never received the original order. We have had instances where we are told that the telephone number and address of our customer “don’t match up” by Southwestern Bell. In one instance, between the time we were told this by Southwestern Bell and the time we were able to convince them that this wasn’t a problem, the customer called Southwestern Bell Internet Service and successfully installed DSL access with them. In downtown Austin, we have been told that large office buildings within a few thousand feet of the telephone Central Office have no facilities available, although they obviously are available. We repeatedly have Southwestern Bell Telephone installers fail to show up for loop installations or use any excuse to not complete the installation. In one case, the installer refused to wait 5 minutes for the building manager to unlock the telephone room. Simultaneously, we are told by our customers that Southwestern Bell Telephone installers engaged in POTs installation are marketing Southwestern Bell DSL and Southwestern Bell Internet Service. I have included below a representative sample of the problems we’re experiencing with SWBT.

In summary, we need Southwestern Bell Telephone to deliver on DSL loops on the same basis as they do for their Internet access partner. Their failure to do so is having an immediate affect on our ability to remain in business. Although we have worked hard for six years to build a competitive, quality product, we are now unable to compete in the marketplace specifically because of SWBT’s efforts to preclude us from doing so.

Covad order# 137323 – Louis Dorfman  
Order received 1/11/00

Line was ordered from SWB and got a line install date of 1/31/00 – customer emailed that SWB never showed up. SWB rescheduled line install for 2/9/00 and again never showed up. Final line install was done 2/11/00 and when Covad went out for install they found that the loop that was delivered by SWB had splices and could not carry DSL. This account is still not up.

Covad order# 116071 and 116079 – Futon Company  
Order received 12/8/99

Line was ordered from SWB and got a line install date of 12/15/99. When SWB showed up they would not wait the 5 minutes to get into the phone room so they left with no word as to when they would be back. On the second order also in Houston, 2 SWB techs showed up and neither one could make up their mind as to what to do so they both left again leaving no word as to when they would be back. Only one of the accounts is up and running at this time.

Covad order# 125864 – Texasclapes

---

Order received 12/23/99

Line was ordered through SWB, received continuous messages that there were no facilities available. Line was reordered on 1/20/00 with same results. By that time SWB had faxed a quote to the customer that they could get them the faster ADSL speeds in 3 to 4 weeks.

Covad order# 98215 – Bill Bradford

Order received 11/2/99

The line was ordered with SWB for a 1.1MB SDSL product. The response was that the line had pair-gains so the customer would need to downgrade to 144/144. The customer, however, already had a 1.1MB DSL line with Texas.Net/SWB. This was an employee that had moved from Texas.Net to Onramp Access.

Covad order# 108397 – Abe Corral

The line was ordered with SWB. No facilities issue. Reordered and response was downgrade due to pair-gains, customer within 12,000ft. SWB said he could get the faster speeds installed with in 3 to 4 weeks with SWB's DSL.

Covad order# 140525 – Dynacon Software

Line was ordered for 768/768. Response from SWB was pairgains from 9700ft. Downgrade needed. Customer was told they could receive the faster connection through SWB.

Covad order# 108391 – Craig Tapley

Line was ordered for ADSL product. Customer downgraded due to pair-gains. Customer canceled and went with another provider that got him the faster connection.

Covad order# 119323 – Grand Ventures Travel

Line was ordered for faster speed. SWB said pair-gains and needs to be downgraded. Customer canceled and went with another provider.

Covad order# 129671 – Austin Suites

This order is for a downtown Austin building and SWB's response is that there are no facilities available. This is in the Omni downtown hotel.

Covad order# 129677 – Brorby and Crozier

The line was ordered. Facilities problem with line. Customer canceled and went with SWB, they had the order installed in 3 weeks.

I also wish to address SWB's recent announcement relating to its bundled DSL product. SWB now offers the DSL line, free CPE (including installation) and unlimited Internet access for \$39. I have made a calculation of the cost to an ISP of "reselling" SWB's DSL

service and it clearly shows that SWB charges most ISPs more for the loop and the required connectivity to SWB's ATM service than SWB charges the retail customer:

Loop prices:

Month to month:

# Loops	RC	NRC
1-50	\$59.00	\$100.00
51-500	59.00	100.00
501-1000	59.00	100.00
1001-5000	59.00	100.00
5001+	59.00	100.00

1 year term:

1-50	\$39.00	\$0.00
51-500	38.00	0.00
501-1000	37.00	0.00
1001-5000	37.00	0.00
5001+	36.00	0.00

3 year term:

1-50	\$39.00	\$0.00
51-500	38.00	0.00
501-1000	37.00	0.00
1001-5000	37.00	0.00
5001+	36.00	0.00

Volume commitments:

Plan Level

A	\$35.00	\$0.00
B	34.00	0.00
C	32.00	0.00
D	30.00	0.00

All the prices listed above came from SBC's web page at [http://info-search.sbc.com/data/tariff/data/pdf/federal/fcc73/sect14.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ffederal%2Ffcc73%2Fsect14%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=ADSL&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/federal/fcc73/sect14.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ffederal%2Ffcc73%2Fsect14%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=ADSL&&X1X)

Unless the ISP can secure a waiver, line conditioning costs \$900. The CPE also is quite costly, although the price varies by type of equipment.

Connection to SWB's ATM network costs about \$1 per user per month, if you assume a 1 year commitment and a 5,000 user to DS3 connection.

In most instances, the ISP will pay SWB more for the loop and ATM service than SWB charges the user for installation, CPE, loop, conditioning and unlimited Internet access. ISPs also, of course, have their own internal costs, and the cost of connecting to their upstream provider.

It is clear that few, if any, independent ISPs can compete with SWB's new bundled offer. I strongly suspect that SWB is cross-subsidizing its competitive service with revenues from its regulated services.

**Declaration of Nathan Stratton**

**on behalf of Koyote Telecom and WebFire Communications, Inc.**

**February 22, 2000**

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My name is Nathan Stratton. I am a telecommunications consultant. My primary activity at present involves assisting small to medium sized local businesses enter the telecommunications market in competition with incumbent local exchange carriers. I have several clients in Texas and have had extensive dealings with Southwestern Bell Telephone Company to negotiate and implement interconnection agreements. Many of my clients come from the internet business. They perceive that it is necessary to enter the local market to maximize their ability to control their own destiny. SWBT has a terrible reputation for service to ISP customers.

When I counsel a potential CLEC client I assess their ability to break even as a carrier. I do not recommend that an ISP form a CLEC merely to recover reciprocal compensation. The networks I design almost uniformly entail the ultimate delivery of a full suite of voice, data, and enhanced services to residential and business customers. While some of my clients are attempting to enter major metropolitan markets, several of my Texas clients are from Tier II and III cities and want to provide high-quality, advanced telephony services, along with internet access to citizens in smaller towns and rural areas. I believe that local ISPs can in fact create and operate very successful affiliated CLECs in smaller cities in this state. That is, if SWBT allows them to fully exercise their rights under the Act. The problem is that SWBT is blocking small "ISP-CLECs" from implementing efficient networks by denying important rights given by the Act and federal and state rules. The citizens of non-metropolitan areas are suffering as a result.



I am encountering vehement opposition from SWBT in three particular areas at this time. Indeed, this declaration was written after two meetings with SWBT for two separate clients in the last 5 days. My opinion, based on this recent contact, is that SWBT has no intention of actually allowing small competitors to construct and operate cost efficient networks. SWBT is making every effort to impose artificial limitations on the manner, means and location of interconnection for the purpose of exchange of traffic and to access UNEs. In my opinion, these are blatant and clear violations of FCC rules and decisions, and contrary to the terms of the agreements between SWBT and my clients.

### **The Issues**

There are three disputed issues. All are related to interconnection for the purpose of traffic exchange and/or for the purpose of accessing UNEs. SWBT has refused to interconnect with at least two of my clients (Koyote and WebFire – hereafter “clients”) using permissible and technically feasible methods requested by them.

### **Tandem Interconnect**

Clients desire to interconnect with SWBT at the local tandem and not each end office served by the local tandem. This is explicitly contemplated by the FCC’s rules. *See, Local Competition Order* §§ 209, 210; 47 C.F.R. § 51.305(a)(2)(iii). The problem appears to be that SWBT has several local tandems that subtend to end offices in multiple rate centers. In other words, there may be NXXs in different local exchanges subtended by the same local tandem. Clients do not intend to use tandem interconnect to convert what would be an intraLATA toll call into a local call. Rather, Clients merely desire to interconnect at the local tandem and use it to connect calls between two end users in the same mandatory local calling area. Clients believe that SWBT routinely connects two central offices in the same rate center through a local tandem that serves multiple rate centers, either for all traffic between the offices, or for overflow. Clients therefore also have the right to interconnect at the local tandem and deliver or receive all local traffic from/to NXXs that are subtend by

that tandem; these CLECs are not required to establish direct end office terminations (DEOTs).

Clients intend to obtain NXXs and associate them with every calling scope that obtains local tandem functionality from the local tandem that serves SWBT retail customers in the same local calling areas. In that fashion, a CLEC customer in Hallettsville, Texas, for example, can call an SWBT customer in Yoakum, Texas (these two towns are in the same SWBT mandatory calling scope) by dialing a 7-digit number and without incurring toll charges. The CLEC in this example would interconnect at SWBT's Corpus Christi local tandem. SWBT is required to allow a CLEC to interconnect at the local tandem, if one exists, and SWBT cannot require a CLEC to obtain DEOTs to an end office that subtends a tandem, unless there is sufficient traffic to justify DEOTs on an economic or network engineering basis.

SWBT's position is that a CLEC must have a physical point of interconnection in every local calling area in which the CLEC will provide local service, without regard to whether there is a local tandem that does not physically reside in that local calling area, but provides tandem functionality to that local calling area. Clients understand that they must connect with every end office if there is no local tandem for that end office. Where there is a local tandem, however, a CLEC can interconnect at the tandem and obtain access to all NXXs served by end offices that are subtended by the local tandem, even in the circumstance where SWBT has a "multi rate center local tandem" for local calls. *See, Local Competition Order* §§ 209, 210; 47 C.F.R. 51.305(a)(2)(iii). The Act and Commission rules do not mandate a physical point of interconnection in every exchange; rather, ILECs must interconnect at any technically feasible point, and at minimum at the local tandem. FTA § 251(c)(2)(A); 47 C.F.R. § 51.305(a)(2)(iii). SWBT has never claimed it is not technically feasible to interconnect at the local tandem.

There is another reason why we believe SWBT must allow Clients to interconnect at the tandems in the situation described above. On information and belief, Clients assert that other carriers already are interconnected in this fashion.

It appears, for example, that Teleport interconnects at a Houston local tandem for NXXs with El Campo, which is not in the Houston mandatory local calling area. Teleport also connects to the Taylor local tandem for NXXs associated with Greenville, which is not in the same mandatory calling scope. Similarly, Voicestream interconnects at the Tulsa, Oklahoma local tandem for Muskogee NXXs, according to the LERG. Denying this type of interconnection to Clients if both SWBT and other carriers already have it is unlawful and unreasonable discrimination.

**End-Point Meet, with One-Way Trunking**

Clients wish to interconnect with certain SWBT end offices using end-point meet and provision the facilities for one-way trunking. SWBT has refused. The first response was that the form of interconnection was a matter of negotiation, and SWBT will not agree. When pressed as to the technical feasibility basis, SWBT stated that this type interconnection was not technically feasible due to “economic considerations.” In other words, SWBT did not wish to incur the cost of building out to the CLECs. To resolve this issue, Koyote offered to bring both fiber paths to SWBT, at no charge. SWBT refused. SWBT will not agree to any form of interconnection other than mid-point meet, two way trunking. This is not permissible under the Act. *See, Local Competition Order* §§ 214, 219; 47 C.F.R. 51.305. A CLEC has the right to obtain any technically feasible form of interconnection. Clients recognize the duty to compensate SWBT for any additional costs: one CLEC offered to pay the entire cost of both the send and receive paths. Incredibly, SWBT refused. Its sole basis was that it would not agree to any form of interconnection other than those listed in the agreement between Clients and SWBT (the so-called T2A).

The T2A, however, makes it clear that other forms of interconnection are permissible, other than those expressly listed. T2A, Attachment 11: NIA § 2.0: “including but not limited to...” SWBT’s web site also indicates that a CLEC may submit a BFR for a different form of interconnection.

<https://clec.sbc.com/clehb/restr/clehb/5state/interconn/20.html> ¶ 2.2.6: “A Bona Fide Request (BFR) is a process which the CLEC can utilize to request services

or network interconnection methods which do not currently exist in the CLEC's contract." SWBT made it absolutely clear at a meeting on Monday, February 21 that it would not even entertain a BFR for any form of interconnection other than those specifically listed in the T2A, despite the terms of the agreement and its own process for evaluating alternative methods.

One of the reasons for seeking this type of interconnection (other than temporary technical reasons associated with the particular switch type some of the CLECs have chosen to install) is that Clients wish to use the interconnection facility (or, more precisely individual derived channels or fiber strands in the interconnection facility) for "inter-network" interconnection under § 251(c)(2) and "access to UNE" interconnection under § 251(c)(3). This method is both feasible and more efficient for the Clients. The FCC has ruled that this is a permissible means to access UNEs. *See, Local Competition Order* §§ 198 - 200.

SWBT is insisting that CLECs obtain access to UNEs only through collocation; The FCC has ruled on several occasions, however, that collocation is not the sole lawful means by which to access UNEs. *Id.*, §§ 553 - 554; *In the Matter of Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*; CC Docket No. 97-231, FCC 98-17 §§ 168 - 170 (rel. Feb. 4, 1998). The holding was recently reaffirmed in the *UNE Remand Order*. Third Report and Order, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 ¶ 482, note 973 (Rel. Nov. 5, 1999).

#### **Copper-Based Interconnection**

In some locations Clients desire to use copper, rather than fiber, to interconnect. While the interconnection will be in large part for access to UNEs under § 251(c)(3), these CLECs may also use copper for § 251(c)(2) interconnection as well. (Most will use fiber for § 215(c)(2) interconnection, but Clients intend to use the fiber for access to fiber based UNEs as well.) Again, Clients assert that copper-based interconnection is technically feasible and that SWBT must allow this interconnection form. SWBT replied by indicating that

copper based interconnection is not technically feasible “due to economic reasons.” As already noted, the FCC clearly ruled in the *Local Competition Order* that economic considerations are not relevant to technical feasibility. ¶¶ 198 - 200.

The principal use of copper interconnection under § 251(c)(3) will be to access DSL-capable loops without the need of collocating DSLAMs in SWBT’s central office or other premises. Clients have secured or will secure property adjacent to or very near the specific SWBT premises. Using a copper facility for access to UNEs is strikingly similar to SWBT’s “Access to UNEs Method 5” in the Central Office. When Clients pointed this out, they were told that “Method 5” was for the purpose of combining UNEs, not accessing UNEs. CLECs will run copper (or hand copper to SWBT to terminate) to an IDF. SWBT will then “extend” the loop to the IDF and perform the cross-connect. Alternatively, Clients are willing to enter the premises and perform the cross-connect themselves.

Two points are relevant. First, in addition to the similarity to SWBT’s “Access to UNEs Method 5” this interconnection method is very similar to “adjacent off-site collocation” when the point of interconnection is in a central office. The difference is that the CLECs will own the adjacent property, and will hand the facility to SWBT for termination. In addition, Clients desire this method as an alternative to physical collocation inside SWBT’s central office even where there is space available. The technical similarity between Clients’ desired approach, SWBT’s “Method 5” and “adjacent collocation” demonstrates that they are all technically feasible. Second, although Clients have indicated they will agree to having the terminations on an Intermediate Distribution Frame, they can, under ¶¶ 179, 206, and 490-491 of the *UNE Remand Order*, demand direct access to the MDF. Clients reserve the right to seek access to the MDF for interconnection/access to SWBT’s UNEs.

. Koyote and SWBT had a contentious meeting on Monday, February 21. At that meeting SWBT absolutely refused to allow Koyote to use a building owned by Koyote that is adjacent to SWBT’s Greenville central office and interconnect to SWBT’s network and UNEs without collocating equipment inside

SWBT's CO. Koyote showed SWBT that SWBT's Texas collocation tariff clearly and unequivocally allows Koyote to submit a "unique collocation request" to obtain this method. Texas Local Access Service Tariff Section 5, Sheet 2, Definition of "Adjacent Off-site Arrangement."<sup>17</sup> SWBT's Collocation Handbook also states at ¶ 1.B.6: "Other Physical Collocation Arrangements- SWBT will provide other collocation arrangements that have been demonstrated to be technically feasible on another ILEC premises. Refer to Appendix A for forms and instructions to request Other Physical Collocation Arrangements. SWBT's denial to provide such a collocation arrangement, or offer an equally cost-effective arrangement, may only do so if it successfully rebuts the presumption of technical feasibility before the state commission that the particular premises in question cannot support the arrangement because of either technical reasons or lack of space."<sup>18</sup>

SWBT refused to even receive a unique collocation request. The strongly stated position was that SWBT would not even address technical feasibility; the tariff does not require SWBT to consider this and the law does not require it. SWBT contended that adjacent collocation is available only when space is exhausted.

Clients, frankly, contend that what they want is **interconnection**, although they have no problem effecting their needs by calling it collocation. The point is that the exact same arrangement is available in the name of collocation under the tariff, so it must be technically feasible. In fact, the same technical arrangement is possible under several theories, each of which was offered at the Monday meeting. Koyote offered to have SWBT provide the fiber and copper to Koyote's site as a leased facility. No. Even though this is an express method under the T2A, and the tariff contains terms for both copper and fiber. Local

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<sup>17</sup> Available at [http://info-search.sbc.com/data/tariff/data/pdf/texas/last.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Flast%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=physical+collocation&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/texas/last.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Flast%2Epdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=physical+collocation&&X1X) – p. 37 of 142.

<sup>18</sup> Available at <https://clec.sbc.com/clechb/restr/clechb/5state/colocate/tex/one.pdf> – p. 4 of 5.

Access Service Tariff Section 5, Sheets 45.1 to 50 (rate elements for SWBT-provided fiber and copper to off-site location, and for termination on appropriate frame).<sup>19</sup>

The main reason that Clients do not want collocation in SWBT's CO is that they intend to use equipment that cannot qualify for collocation, in that it performs purely switching or enhanced functions, or does not yet meet NEBS safety standards. If Clients must still collocate, then they must place equipment in SWBT's office and then in the adjacent location. This is horribly inefficient, and wasteful. In addition, from a policy perspective, off-site interconnection should be encouraged where it is feasible in order to conserve limited collocation space.

SWBT has made it extraordinarily difficult for locally based Texas companies to enter the market and compete with SWBT. SWBT will not agree to any different methods of interconnection. SWBT insists that the same facility cannot be used for both exchange of traffic and access to UNEs. SWBT forces CLECs to collocate in order to access UNEs. SWBT will not allow interconnection only at the tandem to allow access to all NNXs served by that tandem. So long as SWBT is allowed to be so obstreperous and unyielding (indeed, to flagrantly violate clear FCC rules), real competition – involving many participants, and not merely multinational corporations that are sometimes indistinguishable from Bell – will not take root.

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<sup>19</sup> Available at [http://info-search.sbc.com/data/tariff/data/pdf/texas/last.pdf#xml=http://info-search.sbc.com/search97cgi/s97\\_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Flast%2Fpdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=physical+collocation&&X1X](http://info-search.sbc.com/data/tariff/data/pdf/texas/last.pdf#xml=http://info-search.sbc.com/search97cgi/s97_cgi?action=View&VdkVgwKey=data%2Fpdf%2Ftexas%2Flast%2Fpdf&doctype=xml&Collection=Coll%5FTARIFF&QueryZip=physical+collocation&&X1X) – pages 135-142.